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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 178

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, ET AL., APPELLANTS,

vs.

CHARLES M. THOMSON, AS TRUSTEE OF THE PROPERTY OF CHICAGO AND NORTH WESTERN RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JUNE 25, 1942.

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[fol. 3]

IN THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

4020

CHARLES M. THOMSON, as Trustee of the Property of Chicago and North Western Railway Company, a Corporation, Plaintiff,

vs.

ILLINOIS COMMERCE COMMISSION, and JOHN D. BIGGS, WILLIAM PARRILLO, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, Individually and as Members of and Constituting the Illinois Commerce Commission; Dwight H. Green, Individually and as Governor of the State of Illinois; George F. Barrett, Individually and as Attorney General of the State of Illinois; Thomas J. Courtney, Individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, Individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, Individually and as State's Attorney of Du Page County, Illinois; Charles G. Seidel, Individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, Individually and as State's Attorney of McHenry County, Illinois, Defendants

COMPLAINT—Filed March 10, 1942

To the Judges of the District Court of the United States in and for the Northern District of Illinois, Eastern Division:

The plaintiff, Charles M. Thomson, as Trustee of the property of Chicago and North Western Railway Company, presents this, his complaint, against the defendants, Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the

[fol. 4] State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of Du Page County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, and for cause of action says:

I

The Chicago and North Western Railway Company is a corporation duly organized and existing under and by virtue of the laws of the States of Illinois, Wisconsin, and Michigan, and for many years prior to June 28, 1935 was engaged in operating a railroad into and through the States of Illinois, Wisconsin, Michigan, Iowa, Minnesota, and other States, as a common carrier of passengers by railroad within the State of Illinois, and particularly between Chicago and other points in Illinois to and through the Counties of Cook, Lake, Du Page, Kane, and McHenry in the State of Illinois, and to points in Wisconsin, Iowa, and other States, and that said railroad had its principal place of business in the City of Chicago and State of Illinois, and was up to the time above mentioned a common carrier of passengers by railroad, subject to the provisions of the Act of Congress of February 4, 1887, entitled, "An Act to Regulate Commerce, as Amended," commonly known as the Interstate Commerce Act (U. S. Code, title 49, sections 1-22), and also subject to the provisions of a certain other Act of Congress amending and supplementing said Interstate Commerce Act, commonly known and referred to as Transportation Act, 1920 (41 Stat. L. 456).

[fol. 5] II

On June 28, 1935 Chicago and North Western Railway Company instituted a proceeding in the District Court of the United States for the Northern District of Illinois, Eastern Division, pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which proceeding is still pending in this court and is entitled, "In Proceedings for the Reorganization of a Railroad. In the Matter of Chicago and North Western Railway Company, Debtor," Docket No. 60448. In said proceeding the busi-

ness, property and affairs of said Railway Company as the debtor named therein have been and are still being administered under and pursuant to the orders of the court. Plaintiff, Charles M. Thomson, is now and since July, 1939 has been the duly appointed, qualified and acting trustee of the property of said debtor, and as such has been and now is operating its railroad system and properties and conducting its business as a common carrier of persons and property in interstate commerce, as well as intrastate commerce, in the State of Illinois and the other States above mentioned, subject to the aforesaid Acts of Congress and the further amendatory and supplemental Act of Congress known as Transportation Act, 1940 (54 Stat. L. 899).

III

That the defendant Illinois Commerce Commission was created and exists under and by virtue of a law of the State of Illinois entitled, "An Act Concerning Public Utilities," approved June 29, 1921, effective July 1, 1921, and that said Commission is thereby empowered to enforce the provisions of said act, as amended (Ill. Rev. Stats. ch. 111⅔, secs. 1-95), as hereinafter set forth, and has an office in the State Capitol at Springfield, Illinois, in the Southern District of Illinois, Southern Division, and also an office in the City of Chicago in the Northern District of Illinois, Eastern Division, and is constituted as hereinafter set forth, [fol. 6] to-wit:

(1) That the defendant, John D. Biggs, is a citizen of the State of Illinois, and a resident in the Southern District of Illinois, Southern Division.

(2) That the defendant, William Parrillo, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division.

(3) That the defendant, Frank Peska, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division.

(4) That the defendant, Edwin A. Rosenstone, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division.

(5) That the defendant, Val J. Washington, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division.

That said individual defendants are the duly appointed, qualified and acting members of the Illinois Commerce Commission, and now constitute the defendant Commission.

IV

That the defendant, Dwight H. Green, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, qualified and acting Governor of the State of Illinois.

That the defendant, George F. Barrett, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, qualified and acting Attorney General of the State of Illinois.

That the defendant, Thomas J. Courtney, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, quali-
[fol. 7] fied and acting State's Attorney of the County of Cook, in the State of Illinois.

That the defendant, Harry A. Hall, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, qualified and acting State's Attorney of the County of Lake, in the State of Illinois.

That the defendant, Lee E. Daniels, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, qualified and acting State's Attorney of the County of DuPage, in the State of Illinois.

That the defendant, Charles G. Seidel, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, qualified and acting State's Attorney of the County of Kane, in the State of Illinois.

That the defendant, William M. Carroll, is a citizen of the State of Illinois, and a resident in the Northern District of Illinois, Eastern Division, and is the duly elected, qualified and acting State's Attorney of the County of McHenry, in the State of Illinois.

V

The Public Utilities Act of Illinois purports to confer jurisdiction upon the Illinois Commerce Commission to fix and determine reasonable passenger fares with respect to

intrastate traffic on railroads within the State of Illinois and certain other regulatory powers with respect to such intrastate rates, as more specifically set forth below. By Section 33 of said Act it is provided that such rates shall not exceed those in effect on July 1, 1921 without the consent of said Commission (ch. 111-2/3, sec. 33, Ill. Rev. Stats.). Another act of the Legislature of Illinois, ap- [fol. 8] proved May 27, 1907 (ch. 114, Secs. 154-156, Ill. Rev. Stats.), provides that it shall be unlawful for any carrier of passengers by railroad within that State to charge in excess of two cents per mile for the carriage of adult passengers, and further provides penalties of $25 to $100 for every violation, to be recovered by suit brought in the name of the State of Illinois by the Attorney General, or by States' Attorneys in the counties through which such railroads operate.

VI

This case involves questions arising under the Constitution and laws of the United States, and particularly under the Commerce Clause of and the Fourteenth Amendment to said Constitution, and the Acts of Congress known as the Interstate Commerce Act, as amended, Transportation Act, 1920, as amended, and Transportation Act, 1940, referred to above; also the amount involved in this suit is in excess of $3,000 exclusive of interest and costs. The action is of a civil nature and involves the right of this plaintiff to increase, effective as of March 8, 1942, the passenger fares chargeable by him for passenger travel over the lines of the said railroad within the State of Illinois, and particularly within the suburban area in and adjacent to the City of Chicago, pursuant to authority conferred upon the plaintiff by valid orders of the Interstate Commerce Commission issued in the exercise of its jurisdiction under the Acts of Congress aforesaid, which increased fares are in excess of those charged and collected for such travel on July 1, 1921 and are in excess of those heretofore authorized by the Illinois Commerce Commission and in some instances are in excess of two cents per mile, all as more particularly set forth below. The jurisdiction of this court is invoked pursuant to the provisions of sections 24(1), 24(8), and 266 of [fol. 9] the Federal Judicial Code (U. S. Code, title 28, sections 41(1), 41 (8), and 380).

VII

Up to and including March 7, 1942, plaintiff has been collecting fares for the transportation of such intrastate passengers in Illinois, rates and charges pursuant to authority received by Chicago and North Western Railway Company under a report and order of the Interstate Commerce Commission issued October 6, 1925, in a proceeding entitled, "In the Matter of Intrastate Rates Within the State of Illinois," No. 11703 (102 I. C. C. 479), a copy of which is hereto attached, made a part hereof, and marked Exhibit A.

The charges authorized in said order were applied and collected by Chicago and North Western Railway Company from and after the 20th day of October, 1925, upon filing of tariffs with the Interstate Commerce Commission. On the 23rd day of October, 1925, an interlocutory injunction was entered in the District Court of the United States for the Northern District of Illinois, Eastern Division, by a specially constituted court of three judges, wherein the persons who were then the members of the Illinois Commerce Commission, Governor, Attorney General, and several State's Attorneys as aforesaid were enjoined from commencing any suit or proceeding to enforce the provisions of the Statutes of Illinois against the said Railway Company on account of its putting into effect, maintaining, charging and collecting within the State of Illinois, intrastate commutation passenger rates, fares and charges established by said tariffs pursuant to the said Interstate Commerce Commission order, Exhibit A, and were restrained from arresting, molesting or otherwise interfering [fol. 10] with the said Railway Company, or doing any other act or thing under the Statutes of Illinois which would prevent or tend to prevent it from putting into effect, maintaining, charging and collecting the said intrastate commutation rates, fares and charges. This plaintiff, by virtue of the orders of the court in the aforesaid bankruptcy proceeding, is now possessed of all rights previously held by said Railway Company, and has continued likewise to collect such rates, fares and charges for intrastate commutation passenger travel during the time he has been acting as Trustee of the property of said Railway Company as aforesaid up to and including March 7, 1942.

VIII

The said supplemental report and order, Exhibit A, were issued by the Interstate Commerce Commission following and in connection with a nationwide investigation of freight and passenger rates and charges in effect throughout the United States, following the close of the First World War. The purpose and effect of said order of October 6, 1925 was to require the Chicago and North Western Railway Company to increase its passenger fares with respect to intrastate commutation travel within the State of Illinois to substantially the same level as then existed with respect to interstate passenger traffic, which had previously been increased by it pursuant to order and authority of the Interstate Commerce Commission, and thus to remove undue preference and prejudice, and unjust discrimination against interstate commerce, as well as undue preference and advantage to persons traveling in intrastate commerce on its railroad lines within the State of Illinois, as more particularly set forth in Exhibit A.

The said order of the Interstate Commerce Commission was of a continuing nature and expressly provided that it [fol. 11] should remain in force until further order of that Commission. In 1934 the Interstate Commerce Commission undertook a further general and nationwide investigation with respect to then existing passenger fares of common carriers by rail, and on February 28, 1936, in said proceeding known as Docket No. 26550, Passenger Fares and Surcharges (214 I. C. C. 174), entered an order modifying all of its then outstanding orders, including those entered pursuant to Section 13 of the Interstate Commerce Act, with respect to passenger rates, fares and charges, including by specific reference its order in Docket No. 11703, being the supplemental order of October 6, 1925 set forth in Exhibit A, the purpose and effect being to limit passenger fares for one-way travel in coaches to a maximum of two cents per mile and in Pullman and parlor cars of three cents per mile, and certain other purposes not here material. This modifying order did not require any changes in the rates, fares and charges with respect to the intrastate commutation travel in the State of Illinois on the Chicago and North Western Railway Company's lines involved in this suit, but by said order the Interstate Commerce Commission retained its continuing jurisdiction over the Illi-

nois intrastate commutation passenger fares of said Chicago and North Western Railway Company.

In December, 1941, pursuant to a petition filed on behalf of virtually all of the railroads in the United States, the Interstate Commerce Commission undertook a further nationwide general investigation of both freight rates and passenger fares to determine whether or not increases of ten per cent therein should be authorized, as requested by the railroads, in order to assist them in meeting increased operating expenses then being incurred on account of (a) [fol. 12] increased wages to employes, (b) increased cost of materials and supplies, and (c) additional expenditures to safeguard their properties and operations during the war emergency. The said proceeding was entitled, Ex Parte 148, Increased Railway Rates, Fares, and Charges, 1942. By its order entered in said proceeding on January 21, 1942, the Interstate Commerce Commission authorized the railroads, including the plaintiff herein, to increase their passenger rates, fares and charges ten per cent, as more particularly appears by reference to the copy of said order hereto attached, marked Exhibit B, and made a part hereof. In its report of March 2, 1942, supporting said order, the Commission stated:

"Because of the abnormal conditions which now prevail throughout the country we are of the opinion that the increased fares proposed will yield substantial amounts of additional revenues, and that the passenger service justly and reasonably should contribute to meeting the added operating costs of the railroads.

"In an appropriate order made in this proceeding on January 21, 1942, we found that the increase in fares proposed is necessary to enable the petitioners to continue to render adequate and efficient railway transportation service during the present emergency, and that the proposed increased fares will be reasonable and lawful. We therein approved the proposed increased fares subject to a suitable rule for the disposition of fractions stated in the order.

"All our outstanding orders, as amended, authorizing or prescribing interstate and intrastate fares, or bases of fares, were modified by that order, effective concurrently with the establishment of the increased fares therein approved, to the extent necessary to permit the authorized increase to be added to the interstate and intrastate fares

approved or prescribed in, or maintained or held by virtue of, such outstanding orders. We retained jurisdiction for the purpose of determining, if need be, the lawfulness of any particular fare or fares resulting from that order. Increased fares were filed and became effective February 10, 1942.

"The foregoing findings as made in our order of January 21, 1942, are here renewed and affirmed."

[fol. 13] IX

The said 1942 order of the Interstate Commerce Commission, Exhibit B, by a specific reference, modifies its 1925 order set forth in Exhibit A, pursuant to powers granted by Congress to the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act and other provisions of the Acts of Congress above referred to, so as to permit this plaintiff to increase the intrastate commutation passenger rates, fares and charges for passenger travel upon the lines of the Chicago and North Western Railway Company in Illinois, which are involved in this suit, in the same manner that fares applicable to interstate travel in said State and elsewhere were thereby authorized to be increased, and thus to preserve at the same level the rates, fares and charges applicable to both interstate and intrastate passenger travel, thereby avoiding to that extent a repetition of the undue prejudice, preference and advantage and unjust discrimination which the Commission had found to exist in its 1925 report and order, Exhibit A. Pursuant to the right and authority thus conferred upon him by the 1942 order, Exhibit B, plaintiff proceeded, on or about February 6, 1942, to file with each the Interstate Commerce Commission and the Illinois Commerce Commission, tariffs setting forth increased commutation rates, fares and charges applicable to intrastate passenger travel within the State of Illinois, to become effective March 8, 1942 and remain effective thereafter. Thereafter the Illinois Commerce Commission, on February 18, 1942, without prior notice to plaintiff and without any hearing, issued an order purporting to suspend the said tariffs as filed with it until July 6, [fol. 14] 1942, and therein it required the plaintiff to refrain from making any change in the passenger fares, rates and charges here involved from those which were in effect prior to the filing of said tariffs. Said suspension order

also specifically commanded this plaintiff to refrain from making any change in said prior rates, fares and charges by any subsequent tariff or schedule until the Illinois Commerce Commission should undertake and complete a hearing and inquiry into the propriety thereof, unless by special permission of said Commission, all of which more fully appears by a copy of said suspension order hereto attached, marked Exhibit C, and made a part hereof. Said tariffs, in addition to including the rates, fares and charges involved in this suit, also provided increases in certain classes of Illinois intrastate commutation passenger rates, fares and charges represented by additional classes of tickets of somewhat different types and multiples of rides than those in existence on October 6, 1925 when the Interstate Commerce Commission's order increasing Illinois intrastate commutation fares was issued. Notwithstanding that those additional classes of tickets represented fares of the same general character as those increased pursuant to the order of October 6, 1925, plaintiff, in deference to the suspension order of the Illinois Commerce Commission, on or about March 6, 1942 filed with each the Illinois Commerce Commission and the Interstate Commerce Commission appropriate amendments of said tariffs which had been filed with them respectively on or about February 6, 1942, the effect of which amendments was to withdraw from said previously filed tariffs the rates, fares and charges with respect to all such additional classes of tickets, and to leave [fol. 15] in effect on March 8, 1942 and thereafter said increased rates, fares and charges on those classes of tickets specifically mentioned in the report and order of the Interstate Commerce Commission of October 6, 1925, Exhibit A. The increased rates, fares and charges for intrastate commutation passenger tickets of four classes, known as (1) 10 ride bearer tickets, (2) 25 ride bearer tickets, (3) 25 ride individual tickets, and (4) 60 ride monthly individual tickets applicable between stations in Chicago and the adjacent area commonly called the suburban area or zone, are those which have now become effective through the filing and amendment of said tariffs, and are the rates, fares and charges involved in this suit.

X

Plaintiff further shows to the court that said Public Utilities Act of Illinois provides, in section 33, that all sched-

ules of rates, fares and charges shall be filed with the Illinois Commerce Commission, and that no rates shall exceed those in effect on July 1, 1921, without the consent of the Illinois Commerce Commission; and in section 34 thereof that a schedule of all the rates, fares and charges shall be published and posted in the manner and form prescribed by the said Commission; and in section 35 thereof that no service shall be rendered until the rates and other charges and classifications, rules and regulations relating thereto applicable to such service have been filed and published in accordance with the provisions of said Act; and in section 36 thereof that except upon special order of the Commission no changes in any rates, fares or charges shall be made except after thirty days' notice to the Commission and to the public, and it is provided further that the said Illinois [fol. 16] Commerce Commission shall have the power to suspend tariffs showing any such changes until the propriety of the same may be determined after hearing and decision by the said Commission, provided, however, that the period of suspension of such rate or charge shall not extend more than 120 days beyond the time when such rate or charge would otherwise go into effect, but gives to said Illinois Commerce Commission, in its discretion, authority to extend the period of such suspension for a further period not exceeding six months; by section 37 of said law it is forbidden to charge or collect a greater or less or different compensation for any service rendered than the published rates, fares or charges; by section 76 of said Act (Ill. Rev. Stats. ch. 111⅔, sec. 80) it is provided that any violation of said Act or of any order, decision, rule, regulation, direction or requirement of the said Illinois Commerce Commission, or any part or portion thereof, by any public utility or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense, each offense being punishable by a fine of from $500 to $2,000; section 77 of said Act (Ill. Rev. Stats. ch. 111⅔, Sec. 81) provides that every person who, either individually or acting as an officer, agent or employe of a public utility, violates or fails to comply with any of the provisions of said Act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof, of the Commission, made or issued under authority of said Act, shall be guilty of a misdemeanor and shall, upon con-

viction, be punished by a fine not exceeding $1,000, or by [fol. 17] imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

XI

Plaintiff further shows to the court that under the laws of the State of Illinois above referred to it is the duty of the Illinois Commerce Commission and of the Attorney General of the State of Illinois and of the State's Attorneys of the several Counties of said State to enforce the provisions of the Constitution and the Statutes of the State of Illinois affecting public utilities, and particularly to see that violations thereof are promptly prosecuted and penalties due the State therefor are recovered and collected as provided in sections 80 and 81 of said Chapter 111⅔ and sections 154-6 of Chapter 114, Illinois Revised Statutes for 1941.

XII

The tariffs aforesaid having been filed by plaintiff with the Interstate Commerce Commission as required by Section 6 of the Interstate Commerce Act, and having now become effective, plaintiff is now prohibited by said Section 6 and other provisions of the Interstate Commerce Act and other Acts of Congress from charging or collecting any less or different rates, fares or charges for the above-mentioned tickets or for transportation of passengers at commutation rates in said suburban area than those set forth in these tariffs as amended. Should plaintiff or his agents fail to collect said rates, fares and charges set forth in these tariffs as amended, he and they would be subject to severe fines, penalties and possible imprisonment under Sections 6 and 10 of the Interstate Commerce Act and other Acts of Congress.

[fol. 18] XIII

Notwithstanding the plain provisions and requirements of the Acts of Congress aforesaid and the right and duty of this plaintiff to comply therewith, defendants are claiming that by virtue of the said suspension order, Exhibit C, and the laws of Illinois aforesaid, plaintiff is prohibited from collecting the increased rates, fares and charges set forth in the tariffs which became effective March 8, 1942 and are threatening plaintiff with the imposition of severe

fines and penalties under color of the said Statutes of Illinois because of his collection of the increased rates, fares and charges made applicable by said tariffs. In this behalf plaintiff alleges that the said increased rates, fares and charges are now the only lawful rates, fares and charges in existence with respect to the four classes of tickets above described for use in intrastate commutation passenger travel upon plaintiff's lines in Illinois. Plaintiff further alleges that by virtue of the Constitution of the United States, the Acts of Congress, the orders of the Interstate Commerce Commission aforesaid, and the filing of the above mentioned tariffs making increased rates, fares and charges effective March 8, 1942, the said increased rates, fares and charges having become effective under and by virtue of the paramount power and authority of the Federal Government, and the said Statutes of the State of Illinois and the said suspension order of the Illinois Commerce Commission are illegal and void and of no force or effect whatsoever with respect to said increased rates, fares and charges. Notwithstanding this, the defendants, individually and as members of the Illinois Commerce Commission, Governor, Attorney General, and State's Attorneys, are now threatening plaintiff and his agents with [fol. 19] prosecutions under the said State laws because plaintiff and his agents are currently collecting the said increased rates, fares and charges. Defendants further threaten, by virtue of such prosecutions, to cause severe fines and penalties to be imposed upon plaintiff as provided in the aforesaid State Statutes; they also threaten to coerce plaintiff and his agents into disregarding the now existing lawful schedule of rates, fares and charges as set forth in said tariffs effective March 8, 1942, and to obstruct and prevent plaintiff and his agents from charging and collecting the same and to subject plaintiff to multitudinous and vexatious suits to recover the said fines and penalties in the event plaintiff and his agents continue to charge and collect the said lawful rates, fares and charges pursuant to Federal authority as aforesaid, all of which attempts and threats will be carried out by said defendants unless restrained by this Honorable Court, as this plaintiff is advised and believes. Unless so restrained, plaintiff is advised and believes that said defendants will institute numerous such prosecutions against this plaintiff and his

agents and will subject plaintiff and his agents to numerous actions for heavy and excessive fines and penalties, and may attempt to subject plaintiff and his agents to arrest and possible imprisonment. By reason of such threats and impending actions plaintiff and his employes are being intimidated and prevented from contesting, in good faith, the validity of the said laws of Illinois and suspension order as applied to the increased rates, fares and charges involved in this suit, and unless said defendants are restrained as prayed for in this complaint, plaintiff will be required either to violate the Acts of Congress aforesaid and refrain from collecting the increased rates, fares and charges which he, in good faith, asserts and believes to be [fol. 20] the lawful and applicable rates, fares and charges in effect at this time, or to be subjected to the risk of the accumulative and confiscatory penalties and punishments which may be imposed as a result of the threatened action of defendants.

XIV

The value of the property employed by plaintiff in furnishing passenger service in said suburban area and required solely because of such service is considerably in excess of $20,000,000. As found and stated by the Interstate Commerce Commission in its 1925 report and order, Exhibit A, the expenses and taxes incurred by the Chicago and North Western Railway Company in performing its passenger service in the said suburban area exceeded by nearly $2,000,000 per year the total revenues derived from its rates, fares and charges collected from the users of such service prior to the twenty per cent increase which was authorized by the Interstate Commerce Commission and went into effect in 1925, and it was then estimated by the Commission that after such twenty per cent increase there would still remain a deficit of some $600,000 annually, resulting from the furnishing of such suburban service. Plaintiff asserts that since 1925 the expenses necessarily incurred in the furnishing of said suburban service have greatly increased but there has been no increase in the rates, fares and charges for such service since 1925; that by reason thereof the furnishing of said service by the plaintiff has heretofore been accomplished at a total expense considerably in excess of the total revenues derived from the passenger traffic utilizing such service and the

service is still being furnished at a loss and without any return upon the aforesaid property value. The recent or-
[fol. 21] der of the Interstate Commerce Commission authorizing an increase in said charges, Exhibit B, affirmatively finds the authorized increase in fares to be necessary in order to meet in part the increased operating expenses now being incurred by the railroads generally, including this plaintiff, and to enable them and him to continue to render adequate and efficient railway transportation service during the present emergency. The rates, fares and charges being collected for the aforesaid intrastate commutation passenger service furnished by plaintiff in Illinois prior to the increased rates, fares and charges effective March 8, 1942 were unreasonable, noncompensatory, and afforded no return whatsoever upon the investment in the property devoted to such service. The commutation rates, fares and charges even as increased March 8, 1942, are on a much lower basis for the most part than single ride passenger fares, being on a basis considerably lower than two cents per mile, except in a comparatively few instances where such increased commutation rates, fares and charges are on a basis slightly in excess of two cents per mile. If plaintiff is required to continue collection of such prior existing rates, fares and charges and to refrain from collecting the increased rates, fares and charges herein involved, the property of the trust estate which is now being administered by this plaintiff as trustee would be taken without due process of law and confiscated contrary to and in violation of the Fourteenth Amendment of the Constitution of the United States.

XV

If the defendants should prevail in their threatened attempts to enforce the collection by plaintiff of said prior existing rates, fares and charges, the results would be (1) [fol. 22] to take without due process of law and confiscate the property of the trust estate of Chicago and North Western Railway Company now being administered by plaintiff under direction of the District Court of the United States for the Northern District of Illinois, Eastern Division, (2) to revive the undue, unreasonable and unjust discrimination against and to interfere with and obstruct interstate commerce that the Interstate Commerce Com-

mission heretofore has found to exist, (3) to revive an undue and unreasonable advantage and preference between persons and localities in favor of intrastate commerce and against interstate commerce likewise heretofore found to exist, and (4) to require plaintiff to violate the Acts of Congress aforesaid and be subjected to the severe fines and penalties therein provided.

XVI

The collection of said increased rates, fares and charges will supply plaintiff with urgently needed additional revenue with which to continue furnishing the said suburban passenger service and, at the same time, to meet the unusual emergency demands currently being made upon plaintiff for the furnishing of transportation in connection with the war activities of the United States Government. The threatened interference with and obstruction to plaintiff in his proposed continued collection of said increased rates, fares and charges, if not restrained by this Honorable Court, will result in immediate and irreparable loss and damage and subject plaintiff to the risk of a continuing, day by day, accrual of the heavy penalties prescribed by the aforesaid Illinois Statutes. The loss of revenues to plaintiff, should defendants succeed in preventing his collection of these lawful increased rates, fares and charges, will be in the aggregate well in excess of $60,000 per year. It would be impossible for plaintiff later to recover the in-
[fol. 23] crease because of the many thousands of passengers whose identity largely would be unknown to plaintiff, and because collection would involve the prosecution of a multiplicity of suits for small individual amounts. The interference with interstate commerce now threatened by the defendants immediately results from the said suspension order, Exhibit C, which was made without notice or hearing and there exists no plain, speedy or efficient remedy available to the plaintiff at law or in equity in the courts of the State of Illinois by which the validity of said suspension order may be determined. Plaintiff is informed and believes and on information and belief alleges that before he could proceed to have an application for a temporary injunction herein heard on notice, defendants, unless immediately restrained by order of this court, will commence and prosecute penalty and other actions against the plain-

tiff under the Illinois Statutes above referred to, and will otherwise harass and hinder plaintiff and his agents in their collection of the lawful rates, fares and charges now in effect, including in such measures of hindrance and harassment the possibility of arrest and prosecution of plaintiff, his agents and servants involved in the collection of said rates, fares and charges.

Wherefore plaintiff, being without adequate remedy at law in the premises, prays:

1. That the court find and declare said increased rates, fares and charges established by said tariffs, effective March 8, 1942, to be the duly established and lawful rates, fares and charges which this plaintiff is now entitled and required to collect for the transportation of passengers in intrastate suburban passenger service in Illinois upon the [fol. 24] four classes of tickets described in the foregoing complaint.

2. That the court find and declare that the prior existing rates, fares and charges, the collection of which defendants are seeking to enforce upon plaintiff, are and were noncompensatory and confiscatory and the enforcement of their collection, in lieu of the increased rates, fares and charges would deprive plaintiff and the estate of which he is Trustee of property without due process of law and deny him, as such Trustee, the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the court find and declare that, in view of the recent general increase in passenger rates, fares and charges covering the transportation of passengers in interstate commerce, the continued collection of the prior existing rates, fares and charges with respect to the intrastate commutation passenger traffic of plaintiff in Illinois, instead of the increased rates, fares and charges established by the tariffs filed by plaintiff, effective as of March 8, 1942, would revive and bring about undue, unreasonable, unjust and unlawful discrimination against interstate commerce and would constitute an undue and unreasonable advantage and preference, as between persons and localities, in favor of intrastate commerce as against interstate commerce.

4. That the defendants named in this complaint, and each and all of them, their officers, servants, employes, agents

and attorneys, and other persons in active concert with, participating with or acting under the control or authority of each and all of said defendants, be enjoined, perpetually, from enforcing or attempting to enforce the aforesaid laws of the State of Illinois or the said suspension order of the [fol. 25] Illinois Commerce Commission with respect to the increased rates, fares and charges involved in this action, and be enjoined from commencing any action or actions or instituting any legal proceedings for the collection of any fines or penalties, or from arresting plaintiff or any of his agents, or attempting to secure the conviction or imprisonment of plaintiff or any of his agents on account of any alleged violation of the laws of the State of Illinois or the said suspension order or other orders of the Illinois Commerce Commission because of the collection of said increased rates, fares and charges by plaintiff or his agents, and be enjoined from in any manner doing any act which would prevent or tend to prevent plaintiff and his agents from charging and collecting the increased rates, fares and charges established by said tariffs effective March 8, 1942, and from molesting or interfering with plaintiff and his agents in any respect whatsoever with respect to their collection of the said increased rates, fares and charges.

5. That this court find and declare that, unless a temporary restraining order be granted, as prayed for herein, without notice, immediate and irreparable injury, loss and damage will result to the plaintiff before a notice can be served and a hearing had herein for a temporary injunction; and that the court thereupon grant and cause to be issued herein a temporary restraining order restraining and enjoining said defendants, their officers, servants, employes, agents and attorneys, or other persons acting under them, as aforesaid, and each and all of them, from doing any of the above mentioned acts or things until a hearing may be had herein upon this plaintiff's application and prayer for a temporary injunction, such hearing to be had upon not less than five days' notice but within ten days [fol. 26] from the granting of such temporary restraining order, which shall expire by its terms at the expiration of ten days from the granting thereof.

6. That upon the granting and issuance of said temporary restraining order, this Court shall fix a time, not less than five days nor more than ten days thereafter, for hear-

ing the application of this plaintiff hereby made for a temporary injunction to be issued by this Court restraining and enjoining said defendants, their officers, servants, employes, agents and attorneys, or other persons acting under them as aforesaid, and each and all of them, from doing any of the above mentioned acts or things until a hearing may be had herein upon this plaintiff's application and prayer for a perpetual injunction and until the final hearing and determination of this cause or the further order of this Court.

7. Plaintiff prays that on final hearing hereof said order of injunction may be made perpetual, and that the plaintiff may have such other, further or different relief as to your Honors may seem meet.

Charles M. Thomson, Trustee of the property of Chicago and North Western Railway Company. William T. Faricy, Nye F. Morehouse, P. F. Gault, Attorneys for Plaintiff, 400 West Madison Street, Chicago, Illinois.

[fol. 27] *Duly sworn to by Charles M. Thomson. Jurat omitted in printing.*

[fol. 28] EXHIBIT "A" TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 11703

In the Matter of INTRASTATE FARES WITHIN THE STATE OF ILLINOIS

Submitted August 1, 1925. Decided October 6, 1925

Commutation fares of the Chicago & North Western Railway Company for the transportation of passengers within the State of Illinois found to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Undue preference, prejudice, and discrimination ordered removed by appropriate increases in the intrastate fares.

R. V. Fletcher, R. N. Van Doren, and *P. F. Gault* for Chicago & Western Railway Company.

H. M. Slater and *Morton F. Culver* for Public Utilities Commission of Illinois.

A. E. Huenergager, Theo. Forby and *Joseph L. Bishop* for City of Zion, Ill., and the Zion Institutions and Industries.

Keig & Sherwood for City of Lockport, Ills., and Chicago Commuters' Association.

Howe, Fordham & Kreamer and *Van Dorf Gray* for Suburban Citizens' Committee.

SUPPLEMENTAL REPORT ON FURTHER HEARING

McCHORD, *Commissioner:*

In the original report in this proceeding, 59 I. C. C. 350, we required carriers by rail in the State of Illinois to make certain increases in their intrastate passenger fares corresponding to the increases theretofore authorized for the eastern group, which includes the Illinois district, in order to remove undue prejudice to interstate passengers, unjust preference of and advantage to intrastate passengers, and unjust discrimination against interstate commerce. We announced that our findings were exclusive of commutation and other multiple forms of tickets, and that such excluded fares and charges would be reserved for further consideration.

In a supplemental report, 77 I. C. C. 173, certain intrastate commutation passenger fares of the Chicago, Lake Shore & South Bend Railway Company, an electric carrier, were ordered increased so that they should not be less than its like fares for corresponding distances, in effect at the same time, for the transportation of passengers in interstate commerce upon its lines within the State of Illinois and between points in that State and points in the State of Indiana. The record now before us was made in part in December 1920, in so far as it concerned the fares of the Chi- [fol. 29] cago & North Western Railway Company, and was completed at a very recent date. This report will be confined to a consideration of the commutation fares of the Chicago & North Western Railway Company, hereinafter called the North Western or petitioner, on the record made following its petition for further hearing filed herein May 15, 1925. No appearance was entered at the later

hearing for the Illinois Commerce Commission or for the Governor of the State, although notified, and although a representative of the State commission, who had appeared for its predecessor, the Public Utilities Commission, throughout the earlier hearing, was present during a part of the later hearing and made a formal statement in the record.

In general terms, the matter in issue at this time is, whether the North Western should, as it seeks authority to do, increase its commutation fares within the State of Illinois by amounts not exceeding 20 per cent above the level of such fares in effect August 25, 1920. The multiple forms of tickets issued by petitioner are known as 10-ride and 25-ride bearer tickets, limited to one year from date of sale; and 60-ride monthly individual tickets, limited to the calendar month for which sold. Petitioner also issues a few 25-ride individual tickets and 30-ride family tickets, both limited to one year. Those forms are not of great importance here but will be noted when considered.

Tickets to bearer good for 10 rides are today upon the level in effect in April, 1897, increased by only 10 per cent June 10, 1918. Bearer tickets for 25 rides have changed their level since 1894 only to this extent; April 10, 1912, approximately 10 cents per ticket, or four-tenths of a cent per ride, was added; and June 10, 1918, these rates were increased by 10 per cent. Monthly tickets, good for 60-rides by one individual during a calendar month, have had no general changes for 34 years other than an increase ranging from 30 to 40 cents per ticket, or from one-half cent to two-thirds of a cent per ride, effective April 10, 1912; and June 10, 1918, these rates were increased by 10 per cent. In view of the changes which have occurred since the year 1914, of the increased cost of labor and materials, and of the higher levels of other charges for transportation, the static condition of these commutation fares is noticeable. The 10 per cent increases were made pursuant to general order No. 28 of the Director General of Railroads.

The North Western serves three main suburban districts; That west of Chicago along the line of its Galena division; that northwest of the same place along the line of the Wisconsin division; and that north of Chicago on the line of the Milwaukee division. The latter is, perhaps, best known as the Lakeside district, and the rails serving it extend through Evanston, Waukegan, and Winthrop Harbor, be-

yond which they cross the Wisconsin-Illinois line to Kenosha and Milwaukee, Wis. The district served by the Wisconsin division is along the rails extending from Chicago through Crystal Lake and Harvard, Ill., beyond the latter point crossing the State Line into Wisconsin, and thence through Janesville and Madison, Wis. The district served by the Galena division needs no further description than that it is substantially due west of Chicago. This account omits branch lines.

[fol. 30] The districts served by petitioner are well settled and the commutation travel along its lines is very great. The main drift of such travel is to and from Chicago, and peak loads are carried inbound in the morning and outbound during the afternoon. To accommodate its patrons petitioner has developed a suburban train service in addition to its through, or long-distance, interstate train service, and holders of commutation tickets are entitled to travel on through trains as well as on suburban trains, subject to certain necessary operating restrictions. There are suburban trains which begin and end their trips at Wisconsin points, such as Kenosha; holders of through commutation tickets from other Wisconsin points, such as Lake Geneva and Janesville, may travel on through trains or on suburban trains to and from Chicago; and it is apparent, therefore, that interstate traffic, through and suburban, and suburban intrastate traffic are quite thoroughly mixed.

The basic charge for one-way passenger fares interstate and intrastate in Illinois and Wisconsin is the same, 3.6 cents per mile; commutation fares for travel between points in Illinois and points in other States, including Wisconsin, were increased 10 per cent June 10, 1918, at the time that such fares applying intrastate in Illinois received a like increase, and 20 per cent effective August 26, 1920; but no increase of 20 per cent has yet been made in commutation fares between points wholly within Illinois. The results are illustrated by what is shown below:

Between Chicago, Ill. and	Distance in miles	One way fare cents	One trip 10-ride ticket cents	One trip 25-ride ticket cents	One trip 60-ride monthly ticket cents
Winthrop Harbor, Ill.	45	161	80.3	70.4	21.4
Kenosha, Wis.	52	188	121	102	29.5
Richmond, Ill.	61	219	115	A 93.5	None
Genoa City, Wis.	63	226	143	A 116	"

A—Individual tickets.

Kenosha is 7 miles beyond Winthrow Harbor, and the difference between the one-way fares from those places to Chicago, 27 cents, is approximately correct. That there is something wrong with the levels of the 10-ride and 25-ride commutation fares from the same places is obvious, for the differences per ride are about 41 and 32 cents respectively. Kenosha is the extreme limit on the Milwaukee division proper from which 60-ride monthly tickets are sold. Plainly, the price of this type of ticket from Kenosha is based upon the rate scheme applicable from points just south thereof and no deduction can be made therefrom. Looking at the State line on the Wisconsin division, the additional distance from Chicago, about 2 miles, explains the difference, 7 cents, between the one-way fares from Genoa City and from Richmond; but this greater distance does not justify the spreads of 28 cents and 22 cents per ride in the 10-ride and 25-ride tickets from those places. The explanation has been given: Commutation fares for travel between points in Illinois and points in Wisconsin were increased 20 per cent in August, 1920, whereas such fares within the State of Illinois have not been so increased. [fol. 31] It is conceivable that the differences in levels as between commutation fares interstate and intrastate, illustrated above, might indicate that the interstate levels were too high. Looking at the levels applicable at Kenosha, and bearing in mind that the approved rate per passenger-mile is now 3.6 cents, the passenger-mile revenues are as follows: On 10-ride tickets, 2.33 cents; on 25-ride tickets, 1.96 cents; and on 60-ride monthly tickets, 0.49 cent. Compare these revenues with the similar revenues from Winthrop Harbor: On 10-ride tickets, 1.80 cents; on 25-ride tickets, 1.58 cents; and on 60-ride monthly tickets, 0.48 cent. But this comparison must wait upon the returns shown by petitioner before a deduction can be made therefrom.

By elaborate exhibits, the North Western attempts to show that its suburban Illinois intrastate fares, as a whole, fail to pay the actual out-of-pocket costs of performing the services. Before looking at the results indicated, however, it may be well to see just what these services are. Suburban services are maintained from points other than Chicago. The latter, however, as the hub of petitioner's system, is the origin or destination of practically all sub-

urban trains, and other services are — comparatively little importance. At test made of traffic for two Sundays in 1925 shows an average per Sunday of 59 suburban and 54 through trains in and out of petitioner's Chicago terminal, and these suburban trains carried an average of 8,126 passengers per Sunday as against an average of 8,046 passengers per Sunday carried on the through trains. About the same time a test was made of the traffic handled on two successive week days, with average results per days as follows: In and out of the Chicago terminal, 193 suburban trains carrying 67,977 passengers, and 65 through trains carrying 8,156 passengers. To accommodate this heavy daily traffic, approximately 34,000 passengers inbound to Chicago every week-day morning and an equal number outbound every week-day afternoon, petitioner has provided 533 passenger coaches and 83 locomotives, which are used exclusively in this service. This equipment is of as high grade as is owned and used by the North Western in through transportation. Suburban coaches, however, average only 40.5 miles per day, whereas coach runs for the whole road operated by petitioner averages 133.5 miles per day. This result is due to the peak character of suburban travel morning and evening. A count of the suburban train movement in and out of the Chicago terminal during week days in December, 1924, shows as follows: Trains from midnight to noon, total 92, of which 72 moved between 6:00 a. m. and 9 a. m.; trains from noon to midnight, total 108, of which 47 moved between 5 p. m. and 6 p. m.; and 75, including these 47, moved between 4 p. m. and 8 p. m. Storage space for these coaches must be provided at Chicago and along the rails of petitioner at lay-over points. At Chicago 23,500 feet of track are used exclusively for the storage of suburban coaches, and other terminal and lay-over points have a total storage capacity in excess of 33,500 feet used exclusively in this service. The storage time of coaches in these yards approximates an average of 10 hours per coach per day of 24 hours, and approximately 890 coaches are stored in these yards each day. These figures mean that, in addition to such outbound and inbound train trips as require no storage, the coaches devoted to this service are utilized for an average of 14 hours per day, and storage is used equal to one and two-thirds times each per day for 533 coaches. While in storage at the yards these coaches are cleaned; and the record shows that coaches used

in suburban service need and receive more frequent and more thorough cleaning than road equipment gets.

[fol. 32] Within the suburban zone, moving over the same trackage layout and using the same terminals, petitioner's suburban trains, through trains, and other equipment movements must be governed by interlocking plants. There are 24 of these plants, which employ 135 men and control 1,207 switches. From midnight to midnight there are 8,382 movements through them. Of these movements 3,247, or more than 38 per cent, are of suburban trains; 1,033, or a little over 12 per cent, are of through trains and only 417, or less than 5 per cent, are of freight trains. Other movements are of switch trains and switch engines. The small percentage of freight trains handled in this zone is due to the provision of special freight lines and the virtual exclusion of all but local freights from the passenger tracks in the zone. For purely passenger service, the record shows, all through traffic on each division could be handled on two main-line tracks. To handle the traffic as it is, through and suburban mixed, the Milwaukee division, running north from the Chicago terminal, has six tracks, which are reduced to four tracks within three miles, where they are further reduced to three tracks extending eleven miles, and beyond that the two-track line is maintained.

The percentage of miles run to miles paid, confining our attention to the suburban districts of petitioner, for both trainmen and enginemen ranged from 93 to 99 per cent for through service, whereas in the suburban service the range is from 52 to 87 per cent. This is due to the character of the suburban service as described above.

We come now to consider the statistical and accounting exhibits of record and, without reciting these in the minute detail in which they are shown, the substantial facts to be drawn therefrom are as follows: Petitioner's entire system had 42,748 employees in 1912, 51,729 in 1918, and 47,288 in 1924. These worked in 1912, 130,195,230 hours, estimated; in 1918, 154,444,349 hours, actual; and 125,436,891 hours, actual, in 1924. The average compensation per hour was 25.08 cents in 1912, 46.8 cents in 1918, and 61.49 cents in 1924. Put in another way, the average annual compensation per employee was $764 in 1912, $1,397 in 1918, and $1,631 in 1924. Taxes for the entire system were $3,422,838 in 1912, $5,497,481 in 1918, and $9,348,842 in 1924. As com-

pared with prices paid in 1912, the costs of materials during 1924 were higher by the percentages which follow: Oak Cross-ties, 97 per cent; switch and bridge ties, 74 per cent; rails, 58 per cent; and coal, 37 per cent. Plainly stated the costs of most things petitioner must buy have been increased by from 50 per cent to more than 120 per cent above their costs prior to the World War; whereas, commutation fares for approximately 60,000 intrastate rides per day, as compared with approximately 8,000 through interstate rides per day, have been increased only 10 per cent during the same period.

Upon the showing made, petitioner has failed to earn 5.75 per cent upon the cost of its road and equipment, including materials and supplies, since 1920; and the shortage for the calendar year 1924 was more than $12,000,000. While the investment figure does not necessarily indicate the value of petitioner's property, in the instant circumstances we may [fol. 33] use it in estimating the cost of the particular service. Using accounting methods approved by us, petitioner estimates that the expenses and taxes incurred in the performance of its suburban services, above described, exceed the revenues derived therefor by more than $1,297,900. A further estimate indicates that, even though commutation fares for intrastate transportation in Illinois be increased by 20 per cent as here sought, there will still be a deficit in the revenues from this service in excess of $600,000. In other words, petitioner's suburban fares in the Chicago district, interstate and intrastate, do not pay and will not pay anything toward a return upon petitioner's investment; and the increases sought are expected merely to reduce the out-of-pocket loss.

As between the cost of and the returns from the service the showing leaves a wide margin adequate to cover possible error, and it may therefore be accepted, for present purposes, that the figures are approximately correct and illustrate an actual condition. The greater part of the deficit is chargeable to the intrastate service, aggravated by the lower bases of intrastate fares.

Petitioner's commutation fares were initiated so long ago that no one now has personal knowledge of the scheme upon which they were first constructed; however, they maintain a relationship to mileage. No competitive influences holding these fare levels down are shown, but there are

other carriers serving the same general suburban districts, and petitioner attempts to make its commutation fares relatively just as between the three intrastate districts served by it and without undue preference or prejudice to any district or place. Therefore, it will not be necessary to examine all the varieties of multiple tickets or the rates and charges to all stations. The situation here presented may be fully shown by taking stations at distances approximately 5 miles apart and following the line of the Milwaukee division northward from petitioner's Chicago terminal. Nor will it be necessary to show present fares, inasmuch as the rates sought are in every instance merely 20 per cent higher than the present rates, subject to a maximum charge of 2 cents per mile in deference to the State statute.

[fol. 34] Statement Showing Proposed Commutation Fares Between Chicago and Stations on C. & N. W. Ry.
Also the Rate Per Ride and the Rate Per Mile.

Milwaukee Division

Between Chicago and Illinois	Distance From Chicago	One Way Fare	10-Ride Bearer—Limit 1 Year as Increased by 20%			25-Ride Bearer—Limit 1 Year as Increased by 20%			60-Ride Monthly Individual Limited Calendar Month—as Increased by 20%		
			Rate per Ticket	Rate per Ride	Rate per Mile	Rate per Ticket	Rate per Ride	Rate per Mile	Rate per Ticket	Rate per Ride	Rate per Mile
		$	$	Cents	Cents	$	Cents	Cents	$	Cents	Cents
Cuyler	5.4	.21	A 1.10	11.0	2.00	2.45	9.8	1.81	5.28	8.8	1.63
Calvary	10.4	.39	1.98	19.8	1.90	4.23	16.9	1.62	7.79	13.0	1.25
Kenilworth	15.2	.56	2.78	27.8	1.83	5.88	23.5	1.55	8.72	14.5	.95
Braeside	20.7	.76	3.77	37.7	1.82	8.00	32.0	1.54	9.45	15.7	.76
Fort Sheridan	25.7	.94	4.23	42.3	1.64	9.05	36.2	1.41	10.30	17.2	.67
Lake Bluff	30.2	1.10	5.68	56.8	1.88	12.02	48.1	1.59	11.56	19.3	.64
Waukegan	35.9	1.30	*7.20	72.0	2.00	15.32	61.3	1.71	13.20	22.0	.61
Zion	42.1	1.53	*8.40	84.0	2.00	19.14	76.6	1.82	14.52	24.2	.57
Winthrop Harbor	44.4	1.61	*8.80	88.0	2.00	21.12	84.5	1.90	15.45	25.7	.58

* Rate based on 2¢ per mile per ride.
A No change.

[fol. 35] The above table discloses that the rates sought are reasonably low. It is not feasible to enter into all the statements of comparable fares in effect elsewhere, submitted by petitioner to show how reasonable these charges are for distances exceeding 20 miles. In Commutation Fares on *N. Y., N. H. & H. R.*, 101 I. C. C. 703, we approved certain increased commutation fares between points served by the New Haven and the Grand Central Station in New York City. Taking comparable distances, the 60-trip monthly tickets there approved and here proposed show the following relationships:

	Distance Miles	Fare	Average Per Ride Cents	Rate Per Mile Cents
Approved	30.3	16.48	27.46	.9
Sought	30.2	11.56	19.3	.64
Approved	35.7	17.60	29.33	.82
Sought	35.9	13.20	22	.61
Approved	42.1	20.21	33.68	.8
Sought	42.1	14.52	24.2	.57
Approved	44.4	21.32	35.53	.8
Sought	44.4	15.45	25.7	.58

One direct method of measuring the levels of the rates sought by petitioner is to compare them with the levels of similar commutation fares now in force on the Chicago, North Shore & Milwaukee Railroad, an electric carrier, ordinarily referred to as the North Shore Line or North Shore Electric. The North Shore Line uses the elevated "Loop" tracks in the heart of Chicago, which use carries with it transfer privileges throughout Chicago by way of the elevated system. North of Chicago to Milwaukee the North Shore serves the same general district and communities and substantially parallels the rails of petitioner which constitute its Milwaukee Division. Beyond the 15-mile zone all 60-ride commutation fares sought by petitioner will be very much below the cheapest fares available by the North Shore. For the zone from 15 miles to 30 miles north of Chicago petitioner's proposed 10-ride tickets, and for the zone 15 miles to 35 miles north of Chicago its 25-ride tickets, will be cheaper than similar fares by the North Shore.

Obviously, many reduced-fare multiple tickets usable by bearer offer temptations to defeat one-way fares, which are upon a materially higher basis from points beyond; and this temptation the commutation fares here sought, or any basis below standard fares, would perhaps only lessen.

Without following the figures in detail, it is clear that from points in Wisconsin, such as Janesville, Genoa City, Lake Geneva, and Kenosha, to Chicago, both single-trip and multiple-trip fares may be defeated by using single-trip, or, where they are in effect, multiple-trip, tickets to points in Illinois close to the Wisconsin State Line, such as Harvard, Richmond, or Winthrop Harbor, and from those points using multiple-trip tickets to Chicago. The record indicates not only the possibility of this practice but that it has grown during the years since 1920.

In this connection it should be said that the increased commutation fares here considered were filed by petitioner with the Illinois Commerce Commission, to become effective February 15, 1925, and have been suspended until December 15, 1925. The same schedules were at the same [fol. 36] time filed here, and were suspended in respect of their interstate application. In that situation we sought the cooperation of that commission for the disposition, through a joint hearing and conference agreeable with the cooperative plan, of the issues thus presented, but failed in the effort.

We find that there are no conditions within Illinois justifying the maintenance by petitioner of intrastate commutation passenger fares and of charges for multiple-trip commutation tickets therein lower than the corresponding fares and charges applicable to the interstate transportation of passengers by petitioner to, from, or through the State; and that the maintenance of such intrastate fares and charges lower than the corresponding just and reasonable interstate fares and charges established and maintained by petitioner pursuant to the authority heretofore given by this commission in Ex Parte 74 gives an undue preference and advantage to persons traveling in intrastate commerce on petitioner's lines within said State and subjects persons traveling in interstate commerce on petitioner's lines to, from, or through the State to undue prejudice and disadvantage, and unjustly discriminates against interstate commerce; which undue preference and prejudice and unjust discrimination should be removed.

We further find that, to remove the undue preference and prejudice and unjust discrimination found to exist, petitioner should establish and maintain intrastate commutation passenger fares and charges for multiple-trip commutation tickets for the transportation of passengers

on its lines within Illinois which shall be respectively higher by 20 per cent than those in effect on said lines and applicable to said transportation on August 25, 1920, subject to a maximum of 2 cents per mile.

An order in accordance with the foregoing findings and conclusions will be entered.

[fol. 37] ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of October, A. D. 1925.

No. 11703

IN THE MATTER OF INTRASTATE RATES WITHIN THE STATE OF ILLINOIS

This case being a proceeding instituted by the commission upon petition filed, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a supplemental report on further hearing containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the Chicago & North Western Railway Company, party to this proceeding, be, and it is hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said supplemental report to exist, and to establish, put in force, and maintain multiple-trip and commutation fares for the transportation of passengers in intrastate commerce on said carrier's lines within the State of Illinois which shall be respectively higher by 20 per cent than those in effect on said lines and applicable to said transportation on August 25, 1920, subject to a maximum of 2 cents per mile.

It is further ordered, That this order shall become effective on or before November 23, 1925, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and remain in force until the further order of this commission in the premises.

And it is further ordered, That a copy of this order be served upon the above-named common carrier, party to said proceeding.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 38] EXHIBIT "B" TO COMPLAINT

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

Ex Parte No. 148

Increased Railway Rates, Fares, and Charges, 1942

ORDER

It appearing, That, by petition dated December 13, 1941, as amended, the petitioning class I railway companies of the United States, by petition dated December 22, 1941, as amended, the petitioning class II and class III railway companies of the United States, and certain other railway companies therein mentioned, and by petition dated December 16, 1941, certain common carriers by water engaged in the transportation of passengers, seek authority to increase by 10 percent their freight rates and charges, with certain exceptions not necessary to describe herein, and their passenger fares, except fares specially published for application to members of the military or naval forces of the United States traveling on furlough, and fares published as extra fares, applicable in connection with transportation on particular trains; and that the proper authorities of all States have been notified of this proceeding, and similar application has been or will be made to the regulatory authority of the respective States for permission to increase similarly petitioners' intrastate rates, fares, and charges;

It further appearing, That said petitions have been heard, the proceeding has been submitted, and investigation of the matters and things involved has been made; and that in the hearing and investigation of these matters the Commission has had the cooperation and advice of a committee duly

appointed for the purpose and consisting of members of the State regulatory authorities;

It further appearing, That the increase in fare proposed is necessary to meet, in part, increased operating expenses incurred or to be incurred by said petitioners because of the payment by them of (a) increased wages to employes, (b) increased cost of materials and supplies, and (c) additional expenditures to safeguard petitioners' properties and operations during the present emergency; the details of which will be stated in a report hereafter to be made respecting the proposed increased freight rates and charges;

And the Commission does hereby find that the increase in fares proposed is necessary to enable petitioners to continue to render adequate and efficient railway transportation service during the present emergency; and that, upon consideration of said petitions and the evidence of record, that the proposed increased fares will be reasonable and lawful:

It is ordered, That the increased passenger fares as proposed by the said petitioners be, and they are hereby, approved, provided that where the total increased fares are less than $1 fractions of less than one-half cent shall be dropped and fractions of one-half cent or greater may be [fol. 39] increased to the next whole cent, and that where the total increased fares are more than $1 such fares shall end in 0 or 5, but no more than 2.5 cents shall be added to the present fares as increased by 10 percent in order to make such total fares end in 0 or 5.

It is further ordered, That all outstanding orders, as amended, of the Commission, authorizing or prescribing interstate and intrastate fares, or bases of fares, be, and they are hereby, modified, effective concurrently with the establishment of the increased fares herein approved, only to the extent necessary to permit the increase herein authorized to be added to the interstate and intrastate fares approved or prescribed in, or maintained or held by virtue of, said outstanding orders; and that a copy of this order shall be filed in the docket of each such proceeding, including those proceedings under section 13 of the Interstate Commerce Act enumerated in the order of February 28, 1936, in docket No. 26550, *Passenger Fares and Surcharges.*

It is further ordered, That all tariffs or supplements changing fares by authority of this order, which are main-

tained or held by authority of outstanding orders of the Commission, shall bear on their title pages specific reference to this order.

It is further ordered, That the increased fares herein authorized may be made effective upon not less than 10 days' notice to the Commission and to the general public by publishing, filing, and posting in the manner provided in section 6 of the Interstate Commerce Act; and that a copy of this order be served on each of said petitioners and on the Governors of the several States.

And it is further ordered, That jurisdiction be, and it is hereby, retained by the Commission, for the purpose of determining, if need be, the lawfulness of any particular fare or fares, resulting from this order.

The Commission not yet having determined the remaining issues involved, namely, those relating to the rates and charges for the transportation of freight, and services connected therewith, and for the transportation of milk and cream, jurisdiction is hereby retained for the purpose of further consideration and determination of such other issues herein.

[fol. 40] FOURTH SECTION ORDER NO. 14500

It appearing, That the Commission by its order this day entered in this proceeding, which is hereby referred to and made a part hereof, has approved certain proposed increased fares for the transportation of passengers over the lines of carriers in the United States;

It further appearing, That representations have been made by the applicant carriers in this proceeding that increased fares cannot be published and made effective in the manner authorized therein without producing in some instances charges in contravention of the long-and-short-haul and aggregate-of-intermediates provisions of section 4 of the Interstate Commerce Act; that said carriers have applied for such fourth-section relief as may be necessary to publish and make effective the said proposed increased fares authorized by the said order without relief from the provisions of section 4, and that a special case exists within the meaning of said section:

It is ordered, That carriers subject to the Interstate Commerce Act be, and they are hereby, authorized to establish the increased fares so approved without observing the

provisions of section 4 of the act, provided, that (1) the authority contained herein to maintain fares in contravention of the aggregate-of-intermediates provision of section 4 shall expire six months from the establishment of such fares; and (2) where fares established under the authority contained herein are increased by greater amounts to or from intermediate points than to or from more distant points, or where increases are made in fares to or from intermediate points and not to or from more distant points, thereby creating or increasing departures from the long-and-short-haul provision of section 4, the relief herein shall expire three months from the establishment of such fares; provided, that if applications are filed within the said three months' period for relief to continue any of such fares beyond that period, in the manner and form provided in rule XVIII of the Rules of Practice of the Commission, the fares included in and covered by such respective applications may be continued until the determination thereof by the Commission.

It is further ordered, That in instances in which fares in contravention of the provisions of section 4 are established under the authority contained herein, the schedule or schedules containing such fares shall make reference to this order in the manner required by rule 28 of Tariff Circular 20.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 41] EXHIBIT "C" TO COMPLAINT

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

30480

In the Matter of the Proposed Changes in Commutation or Excursion Fares, Applicable to Illinois Intrastate Traffic, Stated in Tariffs Ill. C. C. Nos. 1687, 1688, 1689, 1690, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, and 1703, of the Chicago and North Western Railway Company, Charles M. Thomson, Trustee.

SUSPENSION ORDER

By the Commission:

On February 6, 1942, the Chicago and North Western Railway Company, Charles M. Thomson, Trustee, filed with the Commission the following schedules:

Ill. C. C. No. 1687, effective March 8, 1942;
Ill. C. C. No. 1688, effective March 8, 1942;
Ill. C. C. No. 1689, effective March 8, 1942;
Ill. C. C. No. 1690, effective March 8, 1942;
Ill. C. C. No. 1693, effective March 8, 1942,
Ill. C. C. No. 1694, effective March 8 to December 31, inclusive, 1942;
Ill. C. C. No. 1695, effective daily, beginning March 8, 1942;
Ill. C. C. No. 1696, effective March 8 to December 31, inclusive, 1942;
Ill. C. C. No. 1697, effective March 8, 1942;
Ill. C. C. No. 1698, effective March 8, 1942;
Ill. C. C. No. 1699, effective March 8 to December 31, inclusive, 1942, and
Ill. C. C. No. 1700, effective March 8 to December 31, inclusive, 1942;

and on February 7, 1942, filed Ill. C. C. No. 1703, effective March 10, 1942; in which it is proposed to change commutation or excursion fares, applicable to Illinois intrastate traffic.

It appears, from an examination of the aforesaid schedules, that the Commission should enter upon a hearing concerning the propriety of the proposed changes in fares, and that, pending the hearing and the decision thereon, the said changes in fares should not go into effect.

It is therefore ordered that the proposed changes in commutation or excursion fares, applicable to Illinois intrastate traffic, stated in Tariffs Ill. C. C. Nos. 1687, 1688, 1689, [fols. 42-43] 1690, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, and 1703 of the Chicago and North Western Railway Company, Charles M. Thomson, Trustee, be, and the same are hereby, suspended until July 6, 1942, subject to the further order of this Commission, and no change shall be made in such fares during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered that the fares thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this proceeding has been disposed of, or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

By order of the Commission at Springfield, Illinois, this 18th day of February, 1942.

(Signed) Frank M. Kalteux, Secretary. (Seal.)

[fols. 44-45] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER—Filed March 10, 1942

Plaintiff moves for the entry of a temporary restraining order as prayed for in the complaint in the above entitled cause and in this behalf submits the draft order hereto attached.

In support of this motion plaintiff relies upon the facts set forth in the verified complaint herein, all of which by this reference are made a part hereof.

W. T. Faricy, Nye F. Morehouse, P. F. Gault, Attorneys for Plaintiff, 400 West Madison Street, Chicago, Illinois.

[fols. 46-47] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION—Filed March 11, 1942

Plaintiff moves for the issuance of an interlocutory injunction as prayed for in the complaint in the above entitled cause and in this behalf submits the draft order hereto attached.

In support of this motion plaintiff relies upon the facts set forth in the verified complaint herein, all of which by this reference are made a part of this motion.

William T. Faricy, Nye F. Morehouse, P. F. Gault, Attorneys for Plaintiff, 400 West Madison Street, Chicago, Illinois.

[fol. 48] In District Court of the United States, Northern District of Illinois

[Title omitted]

Temporary Restraining Order—March 11, 1942

The verified complaint of the plaintiff herein having been duly filed and presented to the undersigned, and it appearing therefrom that because of the threatened day by day accumulation of heavy penalties under a state law and a state order alleged to be invalid, and because of the imminent liability of plaintiff and certain of his agents to arrest for acts believed by them to be lawful and authorized by outstanding orders of the Interstate Commerce Com. [fol. 49] mission but claimed by the defendants to be in violation of state laws and an order of the Illinois Commerce Commission, and because interference with the collection of rates, fares and charges authorized by the Interstate Commerce Commission, effective March 8, 1942, would subject plaintiff to an immediate and irreparable loss of revenues now being collected which could not be recovered by plaintiff, immediate and irreparable injury, loss and damage will result to the plaintiff unless an immediate temporary restraining order is issued, and

It appearing that under Section 266 of the Judicial Code (title 28 U. S. Code, section 380) at least five days' notice must be given to the defendants in this case of any hearing for an interlocutory injunction, during which time defendants would not be restrained from the apprehended acts hereinbefore described, which is the reason for granting this order without notice, and the court being of the opinion that such immediate and irreparable loss, damage and injury would result to the plaintiff and on motion of William T. Faricy, Nye F. Morehouse, and P. F. Gault, Attorneys for said plaintiff,

It is therefore ordered that pending the hearing on plaintiff's motion for a preliminary injunction, but not more than ten days from the entry hereof, defendants Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illi- [fol. 50] nois; Lee E. Daniels, individually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois; and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, and each of them, their servants, agents, employees, attorneys and all persons in active concert or participation with the defendants or any of them be, and they hereby are, restrained and enjoined from commencing any action or actions or instituting any legal proceeding for the collection of any fines or penalties against the plaintiff or his agents on account of the filing by them of tariffs with the Interstate Commerce Commission providing for the collection of increased rates, fares and charges for 10-ride bearer, 25-ride bearer, 25-ride individual, and 60-ride monthly individual tickets for use in intrastate commutation passenger travel over lines of the Chicago and North Western Railway Company in the State of Illinois, said tariffs having been filed on or about February 6, 1942 with each the Illinois Commerce Commission and the Interstate Commerce Commission, and amendments to said tariffs likewise filed on or about March 6, 1942 which withdrew from said first named tariffs certain rates, fares and charges named therein other than those respecting the four classes of tickets above described, or on account of any alleged violation of a certain order issued by the Illinois Commerce Commission under date of February 18, 1942, purporting to suspend the rates, fares, and charges set forth in said tariffs as to the four classes of tickets above described, and from arresting plaintiff or any of his agents or attempting to secure the conviction or imprisonment of plaintiff or any of his agents on account [fols. 51-52] of any of the foregoing acts; and from pre-

venting or hindering plaintiff and his agents from charging and collecting the increased rates, fares and charges so established by said tariffs as amended, effective March 8, 1942; and from molesting or interfering with plaintiff and his agents in any respect whatsoever as to their collection of the said increased rates, fares and charges.

It is further ordered, that plaintiff as a condition of issuance of this order, shall give security by surety bond in the amount of ten thousand dollars, to be approved by the court, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

It is further ordered, that a copy of this order be duly served upon each of the defendants not later than the 14th day of March, 1942.

Enter:

Holly, District Judge.

Entered: March 11th, 1942, at 9.37 M.

[fols. 53-55] Bond on Temporary restraining order for $10,000 approved and filed March 11, 1942, omitted in printing.

[fol. 56] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

MOTION OF THE DEFENDANTS TO STRIKE THE PLAINTIFF'S COMPLAINT AND TO DISMISS THE CAUSE—Filed March 20, 1942

Now come the defendants, Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, indi-

[fol. 57] vidually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, and for this their motion to strike the plaintiff's complaint and to dismiss the plaintiff's cause say and show unto the court that the said complaint is infirm, informal, insubstantial and insufficient in law and in equity; and as and for the particular grounds of the said motion the defendants say and show unto this court:

I

That this court is without jurisdiction of the subject matter of this cause because the complaint does not fairly make, state or plead any case against the validity of any state statute or the interpretation of any state statute by any officer or agent of the State of Illinois under the Constitution of the United States of America.

II

The plaintiff's cause constitutes an attempt to enjoin the execution of the Public Utilities Act of Illinois by officers and agents of the State of Illinois upon the ground that such execution of such statute would invade the rights of the plaintiff under the Constitution of the United States, without showing that interstate commerce is fairly involved and without showing that there is not a plain, adequate and speedy remedy at law or in equity in the courts of the State of Illinois.

III

The complaint does not make, state or plead any case, cause of action or ground of relief, either at law or in equity.

[fols. 58-59] IV

It appears upon the face of the complaint that the order of the Interstate Commerce Commission entered January 21, 1942, upon which order the plaintiff's cause is founded, is null, void and invalid for want of sufficient recitals and findings of fact.

V

It appears upon the face of the said complaint that the order last aforesaid of the Interstate Commerce —, whether valid or invalid, does not by its terms purport to establish or institute any schedule of increased rates applicable to the plaintiff; but that on the contrary the tenor of the order is merely to withdraw federal prohibition against such increased schedule of rates and to suffer the plaintiff to procure appropriate authority, if he can procure such authority, from the Illinois Commerce Commission.

VI

That the complaint is otherwise and in other matters, respects and particulars infirm, informal, insubstantial and insufficient in law and in equity.

Wherefore, the defendants pray that the plaintiff's complaint be stricken and that the above entitled cause be dismissed at the cost of the plaintiff, and the defendants further pray that the temporary restraining order heretofore entered be dissolved.

Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illnois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois.

George F. Barrett, Attorney General of the State of Illinois, Attorney for defendants.

[fol. 60] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

NOTICE—Filed March 20, 1942

To: W. T. Faricy, Esq., Nye F. Morehouse, Esq., T. F. Gault, Esq., Attorneys for Plaintiff, 400 West Madison Street, Chicago, Illinois.

Please take notice that we shall file with the Clerk of the United States District Court on March 20, 1942 a motion to strike the plaintiff's complaint in the above entitled cause and to dismiss the said cause, a copy of which motion is served upon you herewith.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Defendants.

[fols. 61-62] STATE OF ILLINOIS,
County of Cook, ss:

William C. Wines, being first duly sworn upon his oath, deposes and says, that he has served a copy of the above and foregoing motion upon the plaintiff by depositing in the United States Mail a copy thereof, together with a copy of the notice of his intention to file the same, in an envelope bearing three cents (3¢) United States Postage and addressed to counsel for the plaintiff as follows:

W. T. Faricy, Esq., Nye F. Morehouse, Esq., T. F. Gault, Esq., Attorneys for Plaintiff, 400 West Madison Street, Chicago, Illinois.

William C. Wines.

Subscribed and sworn to before me this 19th day of March, A. D. 1942. Mary Neff, Notary Public. (Seal.)

[fol. 63] IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

Findings of Fact and Conclusions of Law—March 21, 1942

This cause having come on for hearing before this Court the 20th day of March, 1942, upon plaintiff's motion for

interlocutory injunction and defendants' motion to strike the complaint and dismiss the cause; and

The Court having heard and considered the matter upon the sworn complaint, affidavits, and exhibits and having heard counsel and being fully advised in the premises, makes the following findings of fact and conclusions of law:

Findings of Fact

1. The Court has jurisdiction of this cause under Sections 24(8), 24(1), and 266 of the Judicial Code.

2. All parties defendant have been duly served with copies of the complaint, temporary restraining order, bond, and plaintiff's motion for interlocutory injunction, and were represented by counsel at the hearing hereof.

3. By its order of January 21, 1942, in Ex Parte No. 148 the Interstate Commerce Commission, after hearing, entered an order, a copy of which is attached to the complaint herein [fol. 64] as Exhibit B, which plaintiff contends in good faith is valid on its face and that it by its terms authorizes (among other things) the plaintiff to increase by ten per cent the plaintiff's then existing intrastate passenger fares applicable to four certain classes of tickets for use in intrastate commerce in the so-called Chicago Suburban Area in the State of Illinois, described in the complaint.

4. On or about February 6, 1942, the plaintiff proceeded to file with the Interstate Commerce Commission and the Illinois Commerce Commission tariffs, the effect of which was to increase the said previously existing Illinois intrastate commutation passenger fares by ten per cent, effective March 8, 1942.

5. On or about February 18, 1942, the defendant Illinois Commerce Commission issued a suspension order (Exhibit C attached to the complaint herein), by the terms of which it undertook to suspend to July 6, 1942 the said tariffs and increased fares named therein and ordered the plaintiff not to file any subsequent tariff or otherwise to change said previously existing fares during such period of suspension or any extension thereof unless specially authorized by said Illinois Commerce Commission.

6. The said tariffs so filed by the plaintiff by their terms became effective March 8, 1942, and plaintiff in good faith

contends that the increased fares therein named upon and since that date up to the present time are the lawful existing fares under and by virtue of said order of the Interstate Commerce Commission in Ex Parte No. 148, and plaintiff likewise contends he is entitled and required to collect and continue collecting same.

7. After the entry of said suspension order, defendants took and have since maintained the position that said order in Ex Parte No. 148 was void and of no force or effect [fol. 65] to authorize the establishment and collection of said increased fares, and that the said suspension order of the Illinois Commerce Commission is a valid and enforcible order and plaintiff, by collecting and continuing to collect said increased fares, is subject to the imposition of the heavy fines and penalties provided in the Illinois Statutes for violations by public utilities of the provisions of the Illinois Public Utilities Act and orders of the Illinois Commerce Commission and the Illinois Two-Cent Fare Law.

8. In support of the position thus taken by defendants, they have threatened and continue to threaten the plaintiff with the commencement and prosecution of numerous actions in the State courts of Illinois for the imposition upon him and his agents of the said fines and penalties if he or they continue to collect the aforesaid increased fares.

9. Unless this Court grants at this time an interlocutory injunction as prayed for in the complaint herein, the plaintiff and his agents will be subject to imminent liability for prosecution and possible arrest because of the threatened day-to-day accumulation of heavy penalties under the aforesaid State Statutes, and will be liable to be interfered with in the collection of said fares by virtue of the said threatened action of the defendants, and plaintiff will thereby be subjected to immediate and irreparable loss of passenger revenues which he in good faith contends are rightfully due him and otherwise be subject to immediate and irreparable loss, damage and injury.

Conclusions of Law

1. Upon the allegations of the sworn complaint and the affidavits and exhibits submitted on behalf of plaintiff in support of his motion and upon the foregoing findings plain- [fols. 66-67] tiff is entitled to an interlocutory injunction as

prayed for in the complaint and motion, to now issue and remain in effect until final determination of this cause.

2. Said interlocutory injunction should issue and become effective upon the giving of a bond by plaintiff in the amount of Ten Thousand Dollars ($10.000.00) indemnifying the People of the State of Illinois for the use of and in trust for any and all persons who may sustain loss by reason of said interlocutory injunction, said bond to be approved by the Court.

3. Ruling on defendants' motion should be reserved until final determination of this cause.

Enter:

Sherman Minton, Circuit Judge; William H. Holly, District Judge; Philip L. Sullivan, District Judge.

Entered: March 21, A. D. 1942, at 11 o'clock, A. M.

[fol. 68] In District Court of the United States for the Northern District of Illinois

[Title omitted]

Order Granting Interlocutory Injunction—March 21, 1942

This cause coming on for hearing before this Court, the 20th day of March, A. D. 1942, pursuant to plaintiff's motion for interlocutory injunction and notice thereon, and pursuant to the defendants' motion to strike the complaint and dismiss the cause,

And the court having received for consideration the sworn complaint herein and the affidavit and exhibits offered on behalf of the plaintiff in support of its motion for interlocutory injunction.

And the court further having received the motion of the defendants to strike the complaint and dismiss the cause for consideration, and having heard arguments of counsel, of both the plaintiff and the defendants, and both the plaintiff and the defendants having submitted written briefs on their respective motions herein, and the Court having made its findings of fact and conclusions of law,

[fol. 69] It is therefore ordered that ruling on the defendants' motion is hereby reserved, and the motion of the

plaintiff for interlocutory injunction is hereby granted on the terms expressed.

It is further ordered that, copies of all exhibits and documentary evidence offered by the plaintiff in support of its motion having been submitted to the counsel for the defendants for examination, leave hereby is given to the said defendants' counsel to reserve the right of the defendants to interpose objections thereto, if they so desire, upon the final hearing, upon the plaintiff's motion.

It is further ordered that upon the showing contained within the sworn complaint and affidavits and exhibits hereto submitted on behalf of plaintiff, an interlocutory injunction shall issue pending a determination of this cause restraining and enjoining the defendants, and each of them, their servants, agents, employes, attorneys, and all persons in active concert or participation with the defendants or any of them, from commencing any action, or actions, or instituting any legal proceedings for the collection of any fines or penalties against the plaintiff, or his agents, on account of the filing by them of tariffs effective March 8, 1942, with the Interstate Commerce Commission, providing for the collection of increased rates, fares and charges for 10-ride bearer, 25-ride bearer, 25-ride individual and 60-ride monthly individual tickets, for use in intrastate com- [fols. 70-71] mutation travel over the lines of the Chicago and North Western Railway Company in the State of Illinois, or on account of any alleged violation of a certain order issued by the Illinois Commerce Commission under date of February 18, 1942, purporting to suspend rates, fares and charges set forth in said tariffs as to the aforesaid four classes of tickets described; and from arresting the plaintiff, or any of its agents, or attempting to secure conviction, or imprisonment of plaintiff, or any of its agents, on account of any of the foregoing acts, and from molesting or interfering with the plaintiff, or his agents, in any respect whatsoever as to their collections of the said increased rates, fares and charges until a further order of this Court.

It is further ordered that the issuance of the said writ of injunction shall be conditional upon the filing by the plaintiff of its bond in the sum of Ten Thousand Dollars ($10,000.00) indemnifying the People of the State of Illinois for the use of and in trust for any and all persons who may

sustain loss by reason of said interlocutory injunction, said bond to be approved by the Court.

Enter:

Sherman Minton, Circuit Judge; William H. Holly, District Judge; Philip L. Sullivan, District Judge.

Dated: March 21, A. D. 1942, at 11 o'clock A. M.

[fol. 72] In District Court of the United States, Northern District of Illinois

[Title omitted]

Interlocutory Injunction—March 21, 1942

The application of plaintiff for an interlocutory injunction in this cause having come on for hearing upon plaintiff's motion and the verified complaint hereon the 20th day of March, 1942, before the Honorable Sherman Minton, Circuit Judge and Honorable William H. Holly and Philip L. Sullivan, District Judges, and it appearing to the court that five days' notice of said hearing has been duly given to the Governor and the Attorney General of the State of Illinois, and to all the defendants in said cause, as provided by law; and the court having heard the matters presented and arguments of counsel for both plaintiff and defendants, and being fully advised in the premises;

It is therefore ordered, that the defendants Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Feska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission: Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's [fol. 73] Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois, Lee E. Daniels, individually and as State's Attorney of Du Page County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, and each of them, their servants, agents, employes, attorneys and all persons in active con-

cert or participation with the defendants or any of them be, and they hereby are, restrained and enjoined from commencing any action or actions or instituting any legal proceeding for the collection of any fines or penalties against the plaintiff or his agents on account of the filing by them of tariffs (effective March 8, 1942) with the Interstate Commerce Commission providing for the collection of increased rates, fares and charges for 10-ride bearer, 25-ride bearer, 25-ride individual, and 60-ride monthly individual tickets for use in intrastate commutation passenger travel over lines of the Chicago and North Western Railway Company in the State of Illinois, said tariffs having been filed on or about February 6, 1942 with each the Illinois Commerce Commission and the Interstate Commerce Commission, and amendments to said tariffs likewise filed on or about March 6, 1942 which withdrew from said first named tariffs certain rates, fares and charges named therein other than those respecting the four classes of tickets above described; or on account of any alleged violation of a certain order issued by the Illinois Commerce Commission under date of February 18, 1942 purporting to suspend the rates, fares and charges set forth in said tariffs as to the four [fols. 74-75] classes of tickets described; and from arresting plaintiff or any of his agents or attempting to secure the conviction or imprisonment of plaintiff or any of his agents on account of any of the foregoing acts; and from preventing or hindering plaintiff and his agents from charging and collecting the increased rates, fares and charges so established by said tariffs as amended, effective March 8, 1942; and from molesting or interfering with plaintiff or his agents in any respect whatsoever as to their collection of the said increased rates, fares and charges; until the final hearing of this cause or the further order of this court.

Dated March 21st, 1942.

By the Court.

Sherman Minton, Circuit Judge; William H. Holly, Philip L. Sullivan, District Judges.

Entered: March 21, 1942, at 11 o'clock A. M.

[fols. 76-78] Bond on interlocutory injunction for $10,000 approved and filed March 21, 1942, omitted in printing.

[fol. 79] IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

Findings of Fact and Conclusions of Law—April 28, 1942

This cause having come on for final hearing before this Court the 17th day of April, 1942, upon defendants' motion to strike the complaint and dismiss the cause and upon the prayer of the complaint for a perpetual injunction; and

The defendants having filed no answer and having elected to stand upon their motion; and

The Court having heard and considered the cause upon the sworn complaint and the supporting evidence heretofore received at the hearing upon plaintiff's motion for interlocutory injunction and upon the briefs and arguments of counsel and certain reports and orders of the Interstate Commerce Commission submitted therewith, of which this Court takes judicial notice, and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Court has jurisdiction of this cause under Sections 24(8), 24(1), and 266 of the Judicial Code.

2. All parties defendant have been duly served with copies of the complaint, temporary restraining order, bond, and plaintiff's motion for interlocutory injunction, and were represented by counsel at the preliminary hearing [fol. 80] herein on March 20, 1942, and at this final hearing.

3. Up to and including March 7, 1942, plaintiff and his predecessor in interest, the Chicago and North Western Railway Company, had been collecting fares for the transportation of intrastate passengers in commutation service in Illinois rates, fares and charges pursuant to requirements of a supplemental report and order of the Interstate Commerce Commission entered upon appropriate findings of value, preference and prejudice and unjust discrimination against interstate commerce under date of October 6, 1925, in a proceeding entitled "In the Matter of Intrastate Fares Within the State of Illinois," Docket No. 11703, 102 I. C. C. 479, a copy of which is attached to the com-

plaint herein as Exhibit A. On October 23, 1925, an interlocutory injunction was entered in the District Court of the United States for the Northern District of Illinois, Eastern Division, by a specially constituted court of three judges, wherein the persons who were then members of the Illinois Commerce Commission, the Governor, Attorney General, and other State officials were enjoined from in any way interfering with the collection of the fares and charges authorized by said order and required by said order and set forth in tariff schedules on file with the Interstate Commerce Commission.

4. The said supplemental report and order, Exhibit A, were issued by the Interstate Commerce Commission following and in connection with a nationwide investigation of freight and passenger rates and charges in effect throughout the United States, following the close of the First World War. The purpose and effect of said order of October 6, 1925 was to require the Chicago and North Western Railway Company to increase its passenger fares with respect to intrastate commutation travel within the State of Illinois to substantially the same level as then existed with respect to interstate passenger traffic, which had previously been increased by it pursuant to order and authority of the [fol. 81] Interstate Commerce Commission, and thus to remove undue preference and prejudice, and unjust discrimination against interstate commerce, as well as undue preference and advantage to persons traveling in intrastate commerce on its railroad lines within the State of Illinois, as more particularly set forth in Exhibit A.

The said order of the Interstate Commerce Commission was of a continuing nature and expressly provided that it should remain in force until further order of that Commission.

5. On February 28, 1936, in a proceeding known as Docket No. 26550, Passenger Fares and Surcharges (214 I. C. C. 174), the Interstate Commerce Commission, in a further general and nation-wide investigation of railroad passenger fares, entered an order which, by specific reference to its above-mentioned previous order in Docket No. 11703, retained its continuing jurisdiction over the Illinois intrastate commutation passenger fares here involved, although the effect thereof was not to require any modification of said fares.

6. In December, 1941, pursuant to a petition filed on behalf of virtually all of the Railroads in the United States, the Interstate Commerce Commission undertook a further nationwide general investigation of both freight rates and passenger fares to determine whether or not increases of ten per cent therein should be authorized, as requested by the railroads, in order to assist them in meeting increased operating expenses then being incurred on account of (a) increased wages to employes, (b) increased cost of materials and supplies, and (c) additional expenditures to safeguard their properties and operations during the war emergency. By its order entered under date of January 21, 1942, in said proceeding, known as Ex Parte No. 148, Increased Railway Rates, Fares, and Charges, 1942, which is a valid and lawful order, the Interstate Commerce Commission authorized the railroads, including the plaintiff [fol. 82] herein, to increase their passenger rates, fares, and charges ten per cent, as appears in Exhibit B, made a part of the complaint, upon findings that said increase is necessary to enable the railroads to continue to render adequate and efficient railway transportation service during the present emergency, and that said increased fares are reasonable and lawful.

7. In its report in Ex Parte No. 148 entered under date of March 2, 1942, the Commission renewed and affirmed the aforesaid findings, and found in addition that wage increases and other increased costs had imposed upon the carriers increased operating expenses upward of $360,000,000 annually; that increased passenger fares and freight rates were requested to enable the carriers to meet these increased expenses and insure their ability to render adquate transportation service during the current war emergency; that these increased expenses were general in character and applied to all classes of traffic; that the only practical method of providing the necessary increased revenues was to grant authority for a general increase in all rates and fares; that the passenger traffic justly and reasonably should bear a part of the proposed increase; that a ten per cent increase in passenger fares would produce upwards of $45,000,000 of additional revenue which, in connection with the increased freight rates allowed, would be just and reasonable. The order of January 21, 1942, further provided that all outstanding orders, as amended, of the Commission, authorizing or prescribing

interstate and intrastate fares, or bases of fares, were thereby modified, effective concurrently with the establishment of the increased fares therein approved, only to the extent necessary to permit the increase therein authorized to be added to the interstate and intrastate fares approved or prescribed in, or maintained or held by virtue of, said outstanding orders; and further, that all tariffs or supplements changing fares by authority of said order, which are [fol. 83] maintained or held by authority of outstanding orders of the Commission, should bear on their title pages specific reference to that order. By reference to outstanding orders previously issued in proceedings under Section 13 of the Interstate Commerce Act and reference to the outstanding order in said Docket No. 11703, this order was made applicable, specifically, to the Illinois intrastate commutation passenger fares involved in this suit.

8. On or about February 6, 1942, plaintiff proceeded to file with the Interstate Commerce Commission and the Illinois Commerce Commission tariff schedules giving reference to the aforesaid order of the Interstate Commerce Commission entered on January 21, 1942, the effect of which was to modify the said previously existing Illinois intrastate commutation and passenger fares by increasing them ten per cent effective March 8, 1942.

9. On or about February 18, 1942, the defendant Illinois Commerce Commission issued a so-called suspension order (Exhibit C attached to the complaint herein), by the terms of which it undertook to suspend to July 6, 1942 the said tariffs and increased fares named therein, and ordered the plaintiff not to file any subsequent tariff or otherwise to change said previously existing fares during such period of suspension or any extension thereof unless specially authorized by said Illinois Commerce Commission.

10. The said tariffs so filed by the plaintiff became effective March 8, 1942 and the increased fares therein named upon and since that date up to the present time are the lawful existing fares, and plaintiff is entitled and required to collect and continue collecting same.

11. The purport and effect of said Illinois Commerce Commission order of February 18, 1942 is to prescribe for plaintiff intrastate passenger fares upon the four classes of tickets above mentioned, as such fares existed on Feb-

ruary 18, 1942, and to prohibit plaintiff from increasing or modifying same unless and until permitted to do so by [fol. 84] further order of that Commission at some indefinite time in the future.

12. The said fares so purported to be fixed and prescribed by the Illinois Commerce Commission are noncompensatory in that they do not produce sufficient revenue for the plaintiff to meet the expenses of rendering the service of transporting intrastate passengers upon said tickets within the Chicago suburban area in the State of Illinois. The business of transporting such passengers within said area is now being conducted, and for some years has been conducted, by the plaintiff at a loss and without deriving any return whatsoever upon the value of the property of the plaintiff devoted to the rendering of such service.

13. The increased rates above mentioned will not be sufficient to overcome the loss being realized by plaintiff from the transportation of intrastate passengers upon the four classes of commutation tickets above mentioned within said area in Illinois, and with the application and collection of said increased fares plaintiff is still realizing a loss therefrom and is deriving no return whatsoever upon the investment in the property used in and devoted to the rendering of such transportation service. Some of said increased fares are at rates in excess of two cents per mile and hence within the prohibition of the Illinois two-cent fare law.

14. After the entry of said suspension order, defendants took and have since maintained the position that said order in Ex Parte No. 148 was void and of no force or effect to authorize the establishment and collection of said increased fares, and that the said suspension order of the Illinois Commerce Commission is a valid and enforceable order and plaintiff, by collecting and continuing to collect said increased fares, is subject to the imposition of the heavy fines and penalties provided in the Illinois Statutes for violations by public utilities of the provisions of the Illinois Public Utilities Act and orders of the Illinois Commerce Commission and the Illinois Two-Cent Fare law.

[fol. 85] 15. In support of the position thus taken by defendants, they have threatened and continue to threaten the plaintiff with the commencement and prosecution of

numerous actions in the State courts of Illinois for the imposition upon him and his agents of the said fines and penalties if he or they continue to collect the aforesaid increased fares.

16. Unless this Court grants at this time perpetual injunction as prayed for in the complaint herein, the plaintiff and his agents will be subject to imminent liability for prosecution and possible arrest because of the threatened day-to-day accumulation of heavy penalties under the aforesaid State Statutes, and will be liable to be interfered with in the collection of said lawful fares by virtue of the said threatened action of the defendants, and plaintiff will thereby be subjected to immediate and irreparable loss of passenger revenues rightfully due him, thereby being deprived of his property without due process of law.

Conclusions of Law

1. The said order of the Interstate Commerce Commission of January 21, 1942 is a valid order and it authorizes the ten per cent increase in fares as set forth in the aforesaid tariffs filed by the plaintiff and effective March 8, 1942.

2. The said order of January 21, 1942 expressly modified the previous order of the Interstate Commerce Commission entered in 1925 (Exhibit A attached to the complaint herein), by which the Interstate Commerce Commission had taken jurisdiction over the passenger fares involved in this suit, which jurisdiction it had thereafter retained. By virtue of its orders referred to in the foregoing findings, the Interstate Commerce Commission asserted and exercised its paramount and exclusive authority in the regulation of the passenger fares here involved, leaving the Illi- [fols. 86-87] nois Commerce Commission without power to act with respect thereto.

3. The passenger fares established by the said tariffs which became effective March 8, 1942, are the lawful existing passenger fares which plaintiff is entitled to collect and retain.

4. The Illinois Commerce Commission's order of February 18, 1942 (Exhibit C attached to the complaint herein) is void and of no force or effect whatever with respect to the fares and charges for the four classes of tickets above mentioned.

5. The rates which said Illinois Commerce Commission order would require plaintiff to observe and collect with respect to the four classes of commutation tickets for intrastate passenger travel, involved in this suit, would be noncompensatory and confiscatory. Enforcement of said order would deprive plaintiff of his property without due process of law, in violation of Amendment XIV of the Constitution of the United States.

6. Defendants' motion to strike and to dismiss should be denied.

7. Plaintiff is entitled to a perpetual injunction as prayed for in the complaint herein and a decree of injunction will issue accordingly at this time.

Sherman Minton, Circuit Judge. William H. Holly, District Judge. Philip L. Sullivan, District Judge.

April 28, 1942.

[fol. 88] IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND GRANTING PERMANENT INJUNCTION—April 28, 1942

This cause having come on for final hearing before this Court this 17th day of April, 1942, upon defendants' motion to strike the complaint and dismiss the cause and upon the prayer of the complaint for a permanent injunction; and

The Court having heard and considered the arguments of counsel and being fully advised in the premises, and having made and entered herein its findings of fact and conclusions of law;

It is therefore ordered, that the defendants' motion to strike the complaint and dismiss the cause be and it is hereby denied; and

For the reasons that the order of the Interstate Commerce Commission of January 21, 1942, referred to in said findings, has authorized plaintiff to establish and collect the increased passenger fares involved in this suit, and

the order of the Illinois Commerce Commission which would prevent him from establishing and collecting same is void and the fares which he would be required to collect pursuant to said last-mentioned order would be confiscatory of his property, all as more particularly set forth in the [fol. 89] findings and conclusions this day entered herein by the Court;

It is further ordered, that the defendants Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Danie-s, individually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois; and William H. Carroll, individually and as State's Attorney of McHenry County, Illinois, and each of them, their servants, agents, employees, attorneys and all persons in active concert or participation with the defendants or any of them be, and they hereby are, restrained and enjoined, perpetually from commencing any action or actions or instituting any legal proceeding for the collection of any fines or penalties against the plaintiff or his agents on account of the filing by them of tariffs (effective March 6, 1942) with the Interstate Commerce Commission providing for the collection of increased rates, fares and charges for 10-ride bearer, 25-ride bearer, 25-ride individual, and 60-ride monthly individual tickets for use in intrastate commutation passenger travel over lines of the Chicago and North Western Railway Company in the State of Illinois, said tariffs having been filed on or about February 6, 1942 with each the Illinois Commerce Commission and the Interstate Commerce Commission, and amendments to said tariffs likewise filed on or about March 6, 1942 which withdrew [fols. 90-91] from said first-named tariffs certain rates, fares and charges named therein other than those respecting the four classes of tickets above described; or on account of any alleged violation of a certain order issued by

the Illinois Commerce Commission under date of February 18, 1942 purporting to suspend the rates, fares and charges set forth in said tariffs as to the four classes of tickets described; and from arresting plaintiff or any of his agents or attempting to secure the conviction or imprisonment of plaintiff or any of his agents on account of any of the foregoing acts; and from preventing or hindering plaintiff and his agents from charging and collecting the increased rates, fares and charges so established by said tariffs as amended, effective March 8, 1942; and from molesting or interfering with plaintiff or his agents in any respect whatsoever as to their collection of the said increased rates, fares and charges.

Dated April 28, 1942.

By the Court.

Sherman Minton, Circuit Judge; William H. Holly, District Judge; Philip L. Sullivan, District Judge.

[fol. 92] In District Court of the United States, Northern District of Illinois

[Title omitted]

Petition for Appeal—Filed May 25, 1942

The defendants, Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, individually and as State's Attorney of McHenry County, [fols. 93-94] Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, feeling themselves aggrieved by the final order, decree or adjudication

heretofore rendered and pronounced against them in the above entitled cause on or about the 28th day of April, A. D. 1942, hereby jointly and severally petition and pray an appeal from the said final order, decree or adjudication to the Supreme Court of the United States, under and in conformity with the provisions of Section 266 of the United States Judicial Code (28 U. S. C. A. 380), to the end that the said order and adjudication may be reversed, or, in the alternative, that the same may be reversed and remanded to this court with appropriate directions touching and concerning the said cause and the disposition thereof.

The defendants pray that their said appeal be allowed; that a citation be issued as provided by law; that their appeal bond be fixed at the sum of Five Hundred Dollars ($500.00) and that their appeal bond in that sum, proffered herewith, be approved and ordered filed; and that a transcript of the records, proceedings and documents upon which the said order and adjudication was based, duly authenticated and certified, be transmitted to the Supreme Court of the United States under the rules of the Supreme Court in such case made and provided.

Illinois Commerce Commission; and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, indiyidually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois, and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, Defendants-Appellants. By George F. Barrett, Attorney General of the State of Illinois, Attorney for Defendants-Appellants.

[fol. 95] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

ORDER ALLOWING APPEAL AND APPROVING BOND—May 25, 1942

This day came the defendants, Illinois Commerce Commission and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of DuPage County, Illinois; Charles G. Seidel, individually and as State's Attorney of [fols. 96-97] Kane County, Illinois, and William A. Carroll, individually and as State's Attorney of McHenry County, Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, and presented to this court their petition for appeal to the Supreme Court of the United States from the final judgment order or decree rendered, pronounced and spread of record in this Court on the 28th day of April, A. D. 1942, and the said petition having been duly filed together with the defendants' assignment of errors and the defendants' statement of jurisdiction on appeal, all pursuant to the statute, federal rules of civil procedure and the rules of the Supreme Court of the United States in such case made and provided;

It is thereupon ordered that the said appeal to the Supreme Court of the United States be and the same is hereby allowed in this cause as provided by law, that a citation be and the same is herewith issued as provided by law, and that the Clerk of this Court be and he is hereby ordered to prepare and certify a record of the proceedings in the above entitled cause, and transmit the same to the Clerk of the Supreme Court of the United States within forty (40) days from today, as under the rules of the Supreme Court in such cases is made and provided.

It is further ordered that the appeal bond on this appeal be and the same is hereby fixed at the sum of Five Hundred Dollars ($500.00), conditioned upon the said appellants'

prosecuting their said appeal to effect, or paying all costs incurred therein.

The said defendants-appellants now presenting an appeal bond in the said penal sum of Five Hundred Dollars ($500.00) so conditioned, with Standard Accident Insurance Company as surety thereon,

It is further ordered that the said appeal bond be and the same is hereby approved and ordered filed herein.

Enter:

Holly, a Judge of the District Court of the United States for the Northern District of Illinois.

[fol. 98] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed May 25, 1942

The defendants, Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone, and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County, Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of Du Page County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane [fol. 99] County, Illinois; and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, make and present these assignments of error upon the record in the above entitled cause and say that in the record and proceedings in the above entitled cause and in the final order, judgment or decree rendered and pronounced on the 28th day of April, A. D. 1942, by the District Court of the United States specially constituted under the provisions of Section 266 of the Judicial Code (28 U. S. C. A. 380), manifest error intervened in the matters, respects and particulars hereinafter set forth, that is to say:

I

The court erred in rendering and pronouncing the said order, and adjudication.

II

The court erred in denying and in not sustaining the defendants' motion to strike the plaintiff's complaint and to dismiss the cause for want of equity and upon the merits, and in not striking the plaintiff's complaint and in not dismissing the cause for want of equity and upon the merits.

III

The court erred in not holding as a matter of law that the supposed and purported order of the Interstate Commerce Commission dated January 21, 1942, mentioned, set forth and relied upon in the plaintiff's complaint was null, void and of no force, effect or virtue, because the said order was not supported either by the recitals in the text thereof or otherwise, by adequate and sufficient findings of the facts upon which the said order was based.

IV

The court erred in failing to hold that the said supposed and purported order, even if valid according to its terms [fol. 100] and purport, merely permitted the plaintiff to increase the rates, schedules and tariffs mentioned in the said order in so far as there might have existed prior to the entry of the said order any federal prohibition of or any obstacle to such increase in rates, but that the said order intended and contemplated that the plaintiff was nevertheless not exempted by the said order from the necessity of obtaining the sanction, authority or permission of the Illinois Commerce Commission before so increasing such rates, schedules and tariffs.

V

The court erred in so restraining, enjoining and commanding the defendants as in and by the said final order and adjudication they are commanded, restrained and enjoined.

VI

The court erred in not holding that the defendants in the official capacities as aforesaid have been and are en-

titled to commence and prosecute such action or actions or other legal proceeding against the plaintiff for and on account of any increase in the rates, schedules and tariffs as contemplated by the said order of the Interstate Commerce Commission of January 21, 1942, without the permission, consent or authorization of the Illinois Commerce Commission.

VII

That the final order and adjudication aforesaid and the other proceedings had, taken and appearing of record in the above entitled cause are in other wise and other matters, respects and particulars erroneous and contrary to law and equity.

Wherefore, the defendants pray that the said final order, judgment or decree of the United States District Court for the Northern District of Illinois, Eastern Division, rendered and pronounced on the 28th day of April, A. D. 1942, [fols. 101-105] be reversed, or, in the alternative, that the same may be reversed and remanded to the said District Court with appropriate directions, and that the defendants may have all such other, further and different relief and remedy in the premises as the matters appearing upon the record aforesaid may require.

Illinois Commerce Commission, and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, individually and as members of and constituting the Illinois Commerce Commission; Dwight H. Green, individually and as Governor of the State of Illinois; George F. Barrett, individually and as Attorney General of the State of Illinois; Thomas J. Courtney, individually and as State's Attorney of Cook County; Illinois; Harry A. Hall, individually and as State's Attorney of Lake County, Illinois; Lee E. Daniels, individually and as State's Attorney of Du Page County, Illinois; Charles G. Seidel, individually and as State's Attorney of Kane County, Illinois; and William M. Carroll, individually and as State's Attorney of McHenry County, Illinois, Defendants-Appellants, by George F. Barrett, Attorney General of the State of Illinois, Attorney for Defendants-Appellants.

[fols. 106-178] Bond on Appeal for $500.00 approved and filed May 25, 1942, omitted in printing.

[fol. 179] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS

[Title omitted]

PRAECIPE FOR RECORD AND PROOF OF SERVICE THEREOF—Filed May 25, 1942

The Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, is hereby authorized and directed to prepare and certify a transcript of record in the above entitled cause for transmission to the Supreme Court of the United States, and to include therein true and exact copies of the following:

1. Placita.

2. Complaint of plaintiff for equitable relief, including attached exhibits, filed on or about March 10, A. D. 1942.

[fol. 180] 3. Plaintiff's motion for temporary restraining order, filed on or about March 10, A. D. 1942.

4. Plaintiff's motion for interlocutory injunction, filed on or about March 11, A. D. 1942.

5. Order of court issuing temporary restraining order, entered on or about March 11, A. D. 1942.

6. Bond filed by plaintiff in connection with temporary restraining order, filed on or about March 11, A. D. 1942.

7. Motion of defendant to strike the complaint and dismiss the suit, filed on or about March 20, A. D. 1942.

8. Notice of filing of above described motion, filed on or about March 20, A. D. 1942.

9. Findings of fact and conclusions of law, respecting interlocutory injunction, entered on or about March 21, A. D. 1942.

10. Order of court granting interlocutory injunction and reserving ruling on defendants' motion to strike and dismiss, entered on or about March 21, A. D. 1942.

11. Interlocutory decree, entered on or about March 21, A. D. 1942.

12. Bond filed by plaintiff in connection with interlocutory injunction, filed on or about March 21, A. D. 1942.

13. Findings of fact and conclusions of law, respecting perpetual injunction, entered on or about April 28, A. D. 1942.

14. Order, judgment or decree, denying defendants' motion to strike complaint and dismiss the suit and issuing perpetual injunction, entered on or about April 28, A. D. 1942.

15. Defendants' petition for an appeal to the Supreme Court of the United States.

16. Order of Court allowing an appeal to the Supreme Court of the United States.

17. Defendants' assignments of error on said appeal.

18. Citation to appellee relative to such appeal, and return thereupon.

19. Defendants' appeal bond in connection with said appeal.

20. Defendants' jurisdictional statements filed in connection with said appeal.

21. Defendants' statement directing appellee's attention to the provisions of Paragraph 3 of Rule 12 of the Supreme Court of the United States.

[fols. 181-182] 22. Proof of Service of copies of the above described items 15 to 22, both inclusive, upon appellee.

23. This praecipe for record, together with proof of service thereof.

24. Any statements filed by the appellee making against the jurisdiction of the Supreme Court of the United States, and any motions to dismiss or affirm which may be filed by the appellee.

25. Any praecipe for additional portions of the record which may be filed by the appellee.

26. Certificate of the Clerk to the above designated transcript of record.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellants.

PROOF OF SERVICE

Received a copy of the above and foregoing proof of service and copies of the various items therein described this 25th day of May, A. D. 1942.

Charles M. Thomson, As Trustee of the Property of the Chicago and North Western Railway Company, a corporation, plaintiff-appellee.

[fols. 183-184] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 185-186] Citation in usual form showing service on Charles M. Thomson filed May 25, 1942 omitted in printing.

[fol. 187] In Supreme Court of the United States

Designation of Parts of Record to be Printed—Filed July 3, 1942

The appellants hereby designate the entire record as heretofore filed in this Court as the parts of the record which they think necessary for the consideration of the above entitled cause, and authorize and direct the Clerk of the Supreme Court of the United States to have the said entire record printed, provided, however, that he shall [fol. 187a] omit all duplication, all repetition of titles and all other obviously unimportant matters and make proper note thereof.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellants.

Proof of Service

Received a true and exact copy of the above and foregoing Designation of Parts to be Printed, this 1st day of July, A. D. 1942.

William T. Faricy, Hugh F. Morehouse and P. F. Gault, Attorneys for Appellee.

[fol. 187b] In Supreme Court of the United States

Appellants' Statement of the Points upon Which They Intend to Reply—Filed July 3, 1942

I

The order of the Interstate Commerce Commission entered January 21, 1942, relied upon by the plaintiff as authorizing the increase of rates now sought, is void for want of sufficient findings of fact.

[fol. 187c]

II

Whether the order of the Commission is valid or invalid, it does not by its terms purport to do more than withdraw federal opposition from the increased rate schedule; and it is still incumbent upon the railroads to procure appropriate authority from the States with respect to intrastate rates.

III

Nothing in the earlier orders in the proceedings in which the instant order was entered either excuses or supplies the want of findings of a change in conditions justifying an increase in rates.

IV

The legislative character of the order in question did not and could not dispense with the constitutional requirement that administrative orders must be supported by findings of fact.

V

The recitals in the present order and in the supplemental report are insufficient to sustain the order.

VI

The present order is subject to collateral attack by the appellants in the present proceedings.

VII

The present proceeding does not involve any question of appellee's right to relief independently of the order of the Interstate Commerce Commission.

VIII

The trial court erred in denying and in not sustaining defendants' motion to strike the plaintiff's complaint and to dismiss the cause for want of equity upon the merits, and in not striking said complaint and in not dismissing said cause.

[fol. 187d]

IX

The trial court erred in not holding as a matter of law that the purported order of the Interstate Commerce Commission, dated January 21, 1942, set forth and relied upon in plaintiff's complaint, was null, void, and of no force or

effect, because the said order was not supported by adequate or sufficient findings of fact.

X

The trial court erred in failing to hold that the said purported order, even if valid according to its terms and purport, merely permitted the plaintiff to increase the rates, schedules and tariffs mentioned in the said order in so far as there might have existed prior to the entry of such order any federal objection to such increase, but did not exempt the plaintiff from the necessity of obtaining the sanction, authority or permission of the Illinois Commerce Commission before so increasing such intrastate rates, schedules and tariffs.

XI

The trial court erred in restraining and commanding the defendants as in and by the said final order and adjudication they are commanded, restrained and enjoined.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellants.

Proof of Service

Received a true and exact copy of the above and foregoing Statement of Points this 1st day of July, A. D. 1942.
William T. Faricy, Nye F. Morehouse and P. F. Gault, Attorneys for Appellee.

[fol. 187e] [File endorsement omitted.]

[fol. 188] Supreme Court of the United States, October Term, 1942

No. 178

Illinois Commerce Commission, John D. Biggs, et al., Appellants,

vs.

Charles M. Thomson, as Trustee, etc.

Order Noting Probable Jurisdiction—October 12, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdic-

tion is noted and the case is assigned for argument immediately following No. 175.

Endorsed on Cover: File No. 46,672. N. Illinois, D. C. U. S., Term No. 178. Illinois Commerce Commission, John D. Biggs, William Parrillo, et al., Appellants, vs. Charles M. Thomson, as Trustee of the Property of Chicago and North Western Railway Company. Filed June 25, 1942. Term No. 178 O. T. 1942.